

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

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5
6 THE FACEBOOK, INC. AND) C-07-01389 JW
7 MARK ZUCKERBERG,)
8) SAN JOSE, CALIFORNIA
9) OCTOBER 28, 2008
10 PLAINTIFFS,)
11 VS.) PAGES 1-76
12)
13 CONNECTU, INC. (FORMERLY)
14 KNOWN AS CONNECTU, LLC),)
15 PACIFIC NORTHWEST)
16 SOFTWARE, INC., WINSTON)
17 WILLIAMS, AND WAYNE)
18 CHANG,)
19)
20 DEFENDANT.)
21

22)

14
15 TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE JAMES WARE
17 UNITED STATES DISTRICT JUDGE

18 A P P E A R A N C E S:

19 FOR THE PLAINTIFF: ORRICK, HERRINGTON & SUTCLIFFE
20 BY: I. NEEL CHATTERJEE
21 1000 MARSH ROAD
22 MENLO PARK, CALIFORNIA 94025

23
24 APPEARANCES CONTINUED ON NEXT PAGE

25
26 OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
27 CERTIFICATE NUMBER 9595

1

2 APPEARANCES (CONTINUED)

3 FOR DEFENDANTS: BOIES, SCHILLER & FLEXNER, LLP
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6 NEW YORK, NEW YORK 10022

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8 BY: EVAN ANDREW PARKE
9 5301 WISCONSIN AVENUE, N.W.
10 WASHINGTON, D.C. 20015

11

12 FOR QUINN, QUINN, EMANUEL, URQUHART,
13 EMANUEL: OLIVER & HEDGES, LLP
14 BY: BRUCE E. VAN DALSEM
15 865 SOUTH FIGUEROA STREET
16 10TH FLOOR
17 LOS ANGELES, CALIFORNIA 90017

18

19 BY: RANDY GARTEISER
20 555 TWIN DOLPHIN DRIVE
21 SUITE 560
22 REDWOOD SHORES, CALIFORNIA 94065

23

24 SPECIAL MASTER: GEORGE C. FISHER
25 2600 EL CAMINO REAL, SUITE 410
 PALO ALTO, CALIFORNIA 94306

1 SAN JOSE, CALIFORNIA

OCTOBER 28, 2008

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE

10:17:00 4 FOLLOWING PROCEEDINGS WERE HELD:)

10:17:00 5 THE CLERK: CALLING CASE NUMBER 07-1389,

10:17:10 6 FACEBOOK, INC., VERSUS CONNECTU, INC., ET AL, ON

10:17:14 7 FOR ORDER TO SHOW CAUSE RE: SPECIAL MASTER'S REPORT

10:17:17 8 NUMBER 1.

10:17:18 9 COUNSEL, PLEASE COME FORWARD AND STATE

10:17:20 10 YOUR APPEARANCES.

10:17:20 11 MR. CHATTERJEE: GOOD MORNING, YOUR

10:17:24 12 HONOR. NEEL CHATTERJEE REPRESENTING FACEBOOK AND

10:17:28 13 MARK ZUCKERBERG.

10:17:29 14 MR. VAN DALSEM: GOOD MORNING, YOUR

10:17:30 15 HONOR. BRUCE VAN DALSEM ON BEHALF OF QUINN,

10:17:33 16 EMANUEL.

10:17:34 17 MR. BARRETT: GOOD MORNING, YOUR HONOR.

10:17:38 18 DAVID BARRETT ON BEHALF OF CONNECTU AND THE

10:17:42 19 CONNECTU FOUNDERS.

10:17:47 20 MR. FISHER: GEORGE FISHER, SPECIAL

10:17:48 21 MASTER.

10:17:54 22 THE COURT: THIS IS A PROCEEDING WHICH

10:17:57 23 FOLLOWS AN ORDER BY THE COURT TO SHOW CAUSE

10:18:01 24 REGARDING THE SPECIAL MASTER'S REPORT, AND I

10:18:08 25 RECEIVED SUBMISSIONS FROM YOU ALL IN RESPONSE TO

10:18:11 1 THE COURT'S ORDER.

10:18:15 2 I'M WILLING TO GIVE YOU SOME ADDITIONAL

10:18:17 3 TIME TO ADDRESS THE COURT IF YOU WISH.

10:18:20 4 I DID HAVE SOME QUESTIONS WITH RESPECT TO

10:18:22 5 THIS MATTER.

10:18:24 6 I AM REMINDED THAT THIS IS A PROCEEDING

10:18:29 7 WHERE CERTAIN DOCUMENTS WERE FILED UNDER SEAL AND,

10:18:34 8 IN RESPONSE TO THIS ORDER, ADDITIONAL DOCUMENTS

10:18:37 9 WERE FILED UNDER SEAL.

10:18:39 10 WE'RE IN AN OPEN COURTROOM, SO THAT IF

10:18:41 11 THERE ARE MATTERS THAT YOU DON'T WANT ON THE PUBLIC

10:18:46 12 RECORD, YOU NEED TO BE CAREFUL TO ADVISE THE COURT

10:18:49 13 OF THAT.

10:18:51 14 I'LL -- AS FAR AS THE COURT IS CONCERNED,

10:18:56 15 I'M REGARDING THE NATURE AND AMOUNT OF THE

10:18:59 16 CONSIDERATION AS THE MATTERS THAT THE COURT WOULD

10:19:02 17 AVOID INDICATING, BUT THAT OTHERWISE THE PROCESS IN

10:19:14 18 THE MASTER'S REPORT ARE THE MATTERS OF THE COURT'S

10:19:18 19 CONCERN HERE.

10:19:19 20 SO WITH THOSE INTRODUCTORY COMMENTS, DOES

10:19:25 21 EITHER OF THE THREE OF YOU WHO'VE MADE YOUR

10:19:28 22 APPEARANCES KNOWN WISH TO SPEAK TO THE COURT

10:19:30 23 FURTHER?

10:19:31 24 MR. CHATTERJEE: YOUR HONOR, I'LL BE

10:19:35 25 HAPPY TO GO FIRST IF, IF IT SEEMS APPROPRIATE.

10:19:39 1 THE COURT: CERTAINLY.

10:19:39 2 MR. CHATTERJEE: YOUR HONOR, IT SEEMS TO

10:19:42 3 US THAT IN THE, IN THE VARIOUS FILINGS, THERE ARE

10:19:46 4 ESSENTIALLY FOUR ISSUES THAT ARE KIND OF LINGERING

10:19:49 5 OUT THERE THAT NEED TO BE RESOLVED, OR NEED TO BE

10:19:52 6 ADDRESSED AS PART OF THE ORDER TO SHOW CAUSE AND

10:19:55 7 HOW THE ULTIMATE ORDER LOOKS.

10:19:59 8 BREAKING IT DOWN KIND OF INTO THE

10:20:01 9 SIMPLEST FORMS, I THINK THE CONNECTU FOUNDERS AND

10:20:06 10 CONNECTU RAISED AN ISSUE AS TO THE COURT'S

10:20:09 11 JURISDICTION, AND I THINK YOUR HONOR ACTUALLY DEALT

10:20:11 12 WITH THAT, AT LEAST PRELIMINARILY, DURING AN

10:20:15 13 EARLIER HEARING WHERE YOUR HONOR HAD SAID THAT YOU

10:20:18 14 FELT THAT THE COURT DID HAVE THE AUTHORITY TO

10:20:21 15 IMPLEMENT THE JUDGMENT OF THE COURT, AND I THINK

10:20:24 16 THAT'S IN ACCORD WITH EVEN THE CASE LAW THAT THE

10:20:26 17 CONNECTU FOUNDERS AND CONNECTU CITED.

10:20:31 18 WHAT THE COURT CAN'T DO IS ALTER OR

10:20:33 19 CHANGE WHAT THE JUDGMENT IS, AND THIS PROCESS OF

10:20:35 20 WORKING WITH THE SPECIAL MASTER JUST SEEMS TO BE

10:20:39 21 THE MEANS TO EFFECTUATE THE JUDGMENT.

10:20:42 22 THE SECOND ISSUE IS REALLY DIRECTED

10:20:44 23 TOWARDS WHAT IS THE APPROPRIATE FORM OF THE

10:20:49 24 RELEASE.

10:20:50 25 THAT IS AN ISSUE WHERE I ACTUALLY DON'T

10:20:52 1 THINK THE PARTIES REALLY HAVE A MATERIAL DIFFERENCE
10:20:55 2 OF OPINION.

10:20:56 3 WHILE WE ALL SUBMITTED PAPERS TO KIND OF
10:20:58 4 MAKE SURE THAT OUR VARIOUS RIGHTS AND INTERESTS ARE
10:21:01 5 PROTECTED IF THE COURT WANTS TO GO THE ROUTE OF
10:21:04 6 ACTUALLY REQUIRING PEOPLE TO PROVIDE RELEASES, YOUR
10:21:09 7 HONOR'S SUGGESTION IN THE ORDER TO SHOW CAUSE ABOUT
10:21:11 8 BASICALLY SAYING, THE STATEMENT IN THE SETTLEMENT
10:21:14 9 AGREEMENT IS WHAT IT IS AND IT SAYS WHAT IT SAYS
10:21:18 10 AND THERE IS NOT A NEED, AT THIS TIME, TO INTERPRET
10:21:21 11 THE SIGNIFICANCE OF THAT MAY BE AN ENTIRELY VIABLE
10:21:27 12 WAY TO GO.

10:21:28 13 WE SAID THAT IF THE COURT WANTED TO GO
10:21:31 14 THAT ROUTE, WE WOULD BE OKAY WITH IT.

10:21:33 15 IN PAGE 10 TO 11 OF THE CONNECTU
10:21:36 16 FOUNDERS' BRIEFS, THEY ALSO SAID THAT.

10:21:39 17 IF THE COURT DOES WANT TO GO THE ROUTE OF
10:21:41 18 ADDRESSING WHETHER WE SHOULD INTERPRET WHAT THAT
10:21:43 19 PROVISION MEANS AND ACTUALLY DO MORE FORMAL
10:21:46 20 RELEASES, WE CAN TALK ABOUT THAT IF YOUR HONOR
10:21:49 21 THINKS THAT'S APPROPRIATE.

10:21:51 22 THE THIRD ISSUE REALLY GOES TO THE
10:21:54 23 QUESTION OF HOW DOES THE COURT EFFECTUATE THE
10:21:58 24 DISMISSEALS OF THE LAWSUITS, THAT THERE'S A
10:22:02 25 CONSOLIDATED LAWSUIT NOW IN MASSACHUSETTS, AND THEN

10:22:05 1 THERE'S OBVIOUSLY THE LAWSUIT BEFORE YOUR HONOR.

10:22:07 2 I THINK IT'S PRETTY SIMPLE, WITH RESPECT

10:22:09 3 TO THE COURT HERE, TO JUST DISMISS THE CASE WITH

10:22:13 4 PREJUDICE.

10:22:14 5 THE ONE IN BOSTON, THERE'S A PROCEDURE

10:22:17 6 OUT THERE TO FILE MOTIONS TO DISMISS.

10:22:21 7 THE OTHER ALTERNATIVE, OF COURSE, IS TO

10:22:23 8 HAVE SOME SORT OF RECORDED STATEMENT FROM YOUR

10:22:26 9 HONOR THAT WOULD BE SUBMITTED TO JUDGE WOODLOCK IN

10:22:29 10 BOSTON BASICALLY SAYING THAT PURSUANT TO THE

10:22:32 11 ENFORCEMENT OF THE SETTLEMENT AGREEMENT, YOU WOULD

10:22:35 12 REQUEST THAT THE COURT DISMISS THE CASE WITH

10:22:37 13 PREJUDICE OUT THERE.

10:22:40 14 THERE ARE A VARIETY OF PROCEDURAL OPTIONS

10:22:42 15 AVAILABLE TO YOU.

10:22:43 16 THE REAL ISSUE THAT'S RAISED IN THE

10:22:45 17 PAPERS BY THE CONNECTU FOUNDERS, AND CONNECTU, IS

10:22:48 18 ONE OF TIMING. WHEN SHOULD YOUR HONOR ISSUE THAT

10:22:51 19 ORDER?

10:22:53 20 YOUR HONOR HAS ALREADY SAID IN THE

10:22:55 21 JUDGMENT THAT THAT PROVISION IS TO BE ENFORCED, SO

10:22:58 22 IT'S NOW JUST A QUESTION OF IMPLEMENTATION.

10:23:00 23 IF YOU WERE TO DO THAT TODAY, TOMORROW,

10:23:02 24 OR AT WHATEVER POINT IN THE NEAR FUTURE, THAT IS

10:23:08 25 NOT ALTERING OR AMENDING THE JUDGMENT.

10:23:10 1 INSTEAD IT IS MERELY IMPLEMENTING THE
10:23:12 2 JUDGMENT THAT YOUR HONOR ALREADY ENTERED.
10:23:14 3 THE FINAL ISSUE IS THE ISSUE OF
10:23:17 4 CONNECTU'S CONSIDERATION.
10:23:19 5 YOUR HONOR'S ORDER TO SHOW CAUSE LAID OUT
10:23:22 6 A PROCESS FOR EXCHANGING THE CONSIDERATION, BUT
10:23:25 7 THEN IDENTIFIED CORRECTLY THE ISSUE ASSOCIATED WITH
10:23:29 8 THE QUINN, EMANUEL LIEN THAT IS IN EXISTENCE
10:23:35 9 AGAINST THE PROCEEDS OF THE CONSIDERATION THAT
10:23:37 10 FACEBOOK HAS PUT IN.
10:23:39 11 YOUR HONOR, MR. FISHER, THE SPECIAL
10:23:41 12 MASTER, IN HIS REPORT LAID OUT SEVERAL SUGGESTIONS
10:23:44 13 OF OPTIONS OF WAYS TO GO AS FAR AS HOW TO RELEASE
10:23:49 14 THAT CONSIDERATION.
10:23:50 15 I DON'T THINK IT'S AN APPROPRIATE THING
10:23:52 16 TO DO TO SIMPLY RELEASE IT TO THE CONNECTU
10:23:55 17 FOUNDERS, BECAUSE THAT COULD POTENTIALLY EXPOSE
10:23:59 18 FACEBOOK TO CLAIMS DEPENDING ON HOW THE LAW WOULD
10:24:03 19 APPLY, A COURT ORDERED DISPOSITION AS OPPOSED TO
10:24:07 20 PARTIES JUST ENGAGING IN A DISPOSITION.
10:24:10 21 BUT IT DOES SEEM TO US THAT THE PROPER
10:24:12 22 COURSE OF ACTION IS TO FOLLOW THE SPECIAL MASTER'S
10:24:14 23 RECOMMENDATION, WHICH WE AGREE WITH AND MY
10:24:17 24 UNDERSTANDING IS QUINN, EMANUEL AGREES WITH, WITH
10:24:20 25 RESPECT TO THE DISPOSITION OF THE FACEBOOK

10:24:22 1 CONSIDERATION.

10:24:23 2 THE COURT: WHICH IS WHAT?

10:24:24 3 MR. CHATTERJEE: THERE WERE SEVERAL

10:24:26 4 SUGGESTIONS. ONE OF THEM WAS TO HAVE QUINN,

10:24:30 5 EMANUEL -- THERE WERE TWO OPTIONS, ESSENTIALLY.

10:24:33 6 ONE WAS TO HAVE QUINN, EMANUEL AND THE

10:24:36 7 CONNECTU FOUNDERS CREATE AN ESCROW ACCOUNT,

10:24:41 8 ESSENTIALLY, WHERE THEY WOULD PUT THE PROCEEDS AND

10:24:43 9 IT WOULD BE HELD UNTIL THE DISPUTE BETWEEN THEM IS

10:24:46 10 RESOLVED FOR DISPOSITION, AND THEY WOULD HAVE TO

10:24:48 11 FIGURE OUT WHAT THE TERMS WERE FOR THAT ESCROW.

10:24:51 12 IT WOULD NOT BE AN ISSUE FOR US. THE

10:24:53 13 SPECIAL MASTER WOULD SIMPLY RELEASE IT ONCE THEY

10:24:55 14 DID THAT.

10:24:57 15 THE ALTERNATIVE IS THE CHECKS AND THE

10:24:59 16 SHARES WOULD BE JOINTLY WRITTEN TO ALL OF THEM.

10:25:01 17 AND, AND IT WOULD NOT BE DIVIDED IN ANY

10:25:04 18 WAY, BUT IT BASICALLY COULD NOT BE DISPOSED OF

10:25:06 19 UNTIL THEY REACHED SOME KIND OF AGREEMENT.

10:25:10 20 THERE WAS A FINAL ISSUE THAT DIDN'T

10:25:12 21 REALLY GO TO THE MERITS OF THE ORDER TO SHOW CAUSE,

10:25:15 22 BUT MORE OF A PROCEDURAL QUESTION, THAT THE

10:25:17 23 CONNECTU FOUNDERS AND CONNECTU RAISED IN THEIR

10:25:19 24 PAPERS, WHICH WAS THEY WERE ASKING ESSENTIALLY FOR

10:25:24 25 A STAY FOR 21 DAYS ON THE ORDER TO SHOW CAUSE IN

10:25:28 1 ORDER TO ALLOW THEM TO FILE AN EMERGENCY MOTION TO
10:25:31 2 THE NINTH CIRCUIT COURT OF APPEALS.

10:25:35 3 WE ARE VERY OPPOSED TO ADDITIONAL DELAYS
10:25:37 4 IN US GETTING THE VALUE THAT WE NEGOTIATED FOR.

10:25:40 5 WE'RE NOW EIGHT MONTHS PAST WHEN WE
10:25:43 6 SIGNED AN AGREEMENT THAT THOUGHT WE HAD -- THAT WE
10:25:45 7 THOUGHT GAVE US THE FINALITY THAT WE BARGAINED FOR,
10:25:48 8 AND AN ADDITIONAL 21 DAYS WHEN WE'VE ALREADY GONE
10:25:51 9 UP TO THE NINTH CIRCUIT ONCE ON AN EMERGENCY
10:25:55 10 APPEAL, WHICH WAS DENIED, THE EMERGENCY APPLICATION
10:25:58 11 BY THE CONNECTU FOUNDERS AND CONNECTU, IT SEEMS TO
10:26:01 12 US THAT AN ADDITIONAL 21 DAYS JUST CONTINUES TO
10:26:05 13 DEPRIVE US OF THE VALUE THAT WE BARGAINED FOR AND
10:26:09 14 WE DON'T SEE ANY NEED FOR AN ADDITIONAL 21 DAYS TO
10:26:12 15 ESSENTIALLY STAY THE EXECUTION OF THE JUDGMENT.

10:26:14 16 THE COURT: THE ONE ASPECT OF THIS THAT
10:26:17 17 YOU DID NOT ADDRESS WAS THE PROPOSED COMPLAINT AND
10:26:25 18 INTERPLEAD.

10:26:27 19 MR. CHATTERJEE: YOUR HONOR, YES.

10:26:28 20 WE HAD SUGGESTED THAT -- THE PROPOSED
10:26:32 21 COMPLAINT AND INTERPLEADER THAT WE HAD PUT IN OUR
10:26:34 22 PAPERS WITH RESPECT TO QUINN, EMANUEL, WHICH WAS
10:26:37 23 THE STATUTORY INTERPLEADER, THAT WAS SOMETHING THAT
10:26:40 24 THE SPECIAL MASTER DID NOT PROPOSE, BUT WE DID
10:26:42 25 PROPOSE IN OUR PAPERS.

10:26:44 1 I THINK THAT'S A PERFECTLY LEGITIMATE WAY

10:26:47 2 TO GO IF YOUR HONOR WANTED TO DO THAT.

10:26:49 3 I THINK ONE OF THE COMPLEXITIES THAT I

10:26:52 4 DON'T HAVE ENOUGH FACTUAL UNDERSTANDING OF, TO BE

10:26:55 5 CANDID, YOUR HONOR, IS WHAT IS GOING ON BETWEEN

10:26:57 6 QUINN, EMANUEL AND CONNECTU AND THE CONNECTU

10:27:00 7 FOUNDERS, WHAT THE STATUS OF THAT DISPUTE AND THE

10:27:03 8 ARBITRATION IS, BECAUSE YOU DO RUN THE RISK OF

10:27:05 9 HAVING PARALLEL PROCEEDINGS GOING ON, AND I JUST --

10:27:09 10 I DON'T KNOW ENOUGH ABOUT WHAT THEIR DISPUTE --

10:27:11 11 WHAT'S GOING ON IN THEIR DISPUTE BECAUSE IT'S A

10:27:13 12 PRIVATE, A PRIVATE DISPUTE TO KNOW IF WE COULD DO

10:27:16 13 THE COMPLAINT AND INTERPLEADER.

10:27:18 14 BUT WE THINK IT WAS A PERFECTLY VIABLE

10:27:21 15 OPTION ASSUMING THERE'S NO FACT THAT WE'RE UNAWARE

10:27:24 16 OF THAT PRECLUDES IT.

10:27:25 17 THE COURT: VERY WELL.

10:27:27 18 COUNSEL?

10:27:28 19 MR. BARRETT: THANK YOU, YOUR HONOR.

10:27:34 20 DAVID BARRETT FOR CONNECTU AND THE CONNECTU

10:27:38 21 FOUNDERS.

10:27:41 22 I THINK MR. CHATTERJEE HAS SUMMARIZED THE

10:27:46 23 ISSUES BEFORE THE COURT.

10:27:49 24 WHAT I WOULD LIKE TO FOCUS ON IS, I

10:27:51 25 THINK, A COUPLE OF VERY KEY LEGAL ISSUES, WHICH --

10:27:58 1 LEGAL AND FACTUAL ISSUES WHICH, I THINK, ARE HIGHLY
10:28:03 2 RELEVANT TO ACTUALLY ALL OF THE ISSUES THAT THE
10:28:07 3 COURT NEEDS TO DECIDE IN CONNECTION WITH THE ORDER
10:28:09 4 TO SHOW CAUSE.

10:28:14 5 THE FIRST OF THOSE ISSUES ARISES FROM THE
10:28:17 6 FACT THAT IF THE COURT WERE TO DISTRIBUTE OR ORDER
10:28:23 7 THE DISTRIBUTION OF THE SETTLEMENT CONSIDERATION AT
10:28:29 8 SOME POINT IN THE IMMEDIATE FUTURE, WHAT EFFECT
10:28:33 9 WOULD THAT HAVE?

10:28:36 10 AND AS YOU KNOW, YOUR HONOR, ONE OF THE
10:28:40 11 ARGUMENTS THAT WE MAKE IS THAT THE COURT LACKS
10:28:44 12 JURISDICTION TO ORDER THAT DISTRIBUTION.

10:28:51 13 I BELIEVE, ESSENTIALLY, FOR THE SAME
10:28:53 14 REASON THAT THE COURT -- AND I'M GOING TO ARGUE
10:28:57 15 THAT THE COURT LACKS JURISDICTION -- IT'S ALSO NOT
10:29:00 16 A GOOD IDEA, AS A MATTER OF THE COURT'S EXERCISE OF
10:29:04 17 ITS EQUITY POWERS IN DEALING WITH THE SPECIAL
10:29:06 18 MASTER'S REPORT, AND, INDEED, ALSO SUPPORTS THE
10:29:10 19 IRREPARABLE INJURY PRONG OF OUR REQUEST TO STAY
10:29:16 20 EXECUTION IF THE COURT WERE TO ORDER THE
10:29:21 21 DISTRIBUTION OF THE SETTLEMENT PROCEEDS.

10:29:23 22 THE BASIS FOR ALL OF THOSE CONTENTIONS,
10:29:26 23 YOUR HONOR, IS THAT, AS YOU KNOW, THE DISTRIBUTION
10:29:30 24 OF THE SETTLEMENT PROCEEDS, AND PARTICULARLY WHAT
10:29:33 25 MR. CHATTERJEE IS INTERESTED IN, WOULD ENTAIL

10:29:37 1 GIVING THE CONNECTU STOCK, WHICH IS NOW HELD BY THE
10:29:41 2 SPECIAL MASTER, TO FACEBOOK.

10:29:46 3 NOW, CONNECTU, IN PAPERS PREVIOUSLY FILED
10:29:50 4 WITH THE COURT, HAS TOLD YOU WHAT THE EFFECT OF
10:29:55 5 TAKING THAT ACTION, ORDERING THE STOCK DISTRIBUTED
10:29:58 6 TO THEM, WOULD BE.

10:30:00 7 THEY SAY -- THEY SAID, FIRST OF ALL --
10:30:03 8 AND THIS IS AT PAGE, AT PAGE 5 OF THE BRIEF THAT
10:30:08 9 CONNECTU FILED ON AUGUST 4TH IN OPPOSITION TO THE
10:30:14 10 MOTION -- I'M SORRY, FACEBOOK, PARDON ME --
10:30:19 11 FACEBOOK FILED ON AUGUST 4TH IN OPPOSITION TO
10:30:22 12 CONNECTU'S MOTION FOR A STAY.

10:30:25 13 AT FOOTNOTE 7 OF THAT BRIEF, FACEBOOK
10:30:30 14 INVOKED THE DOCTRINE OF DOMINIX LITIS, WHICH, AT
10:30:36 15 LEAST IN FACEBOOK'S VIEW -- AND THEY CITE A CASE
10:30:39 16 FROM THE FEDERAL CIRCUIT CALLED GOULD V. CONTROL
10:30:45 17 LASER, AND IN FACEBOOK'S VIEW, WHAT THAT CASE
10:30:48 18 STANDS FOR IS THAT IF FACEBOOK OWNS THE CONNECTU
10:30:51 19 STOCK, THEY CONTROL BOTH SIDES OF THE LITIGATION
10:30:53 20 THAT IS NOW PRESENTLY BEFORE THE COURT OF APPEALS
10:30:56 21 AS BETWEEN THEMSELVES AND FACEBOOK -- AND CONNECTU.

10:31:00 22 AND, THEREFORE, THAT CASE IS MOOT, OR
10:31:04 23 THAT APPEAL HAS TO BE DISMISSED BECAUSE THE SAME
10:31:07 24 PARTY IS ON BOTH SIDES OF THE APPEAL.

10:31:10 25 IN ADDITION, YOUR HONOR, IN THE PAPERS

10:31:13 1 THAT WERE PRESENTED TO YOU IN CONNECTION WITH THE
10:31:16 2 STAY, THERE WAS, THERE WAS FURTHER EVIDENCE,
10:31:20 3 INCLUDING EXHIBIT B TO THE DECLARATION OF MY
10:31:23 4 COLLEAGUE, MIKE UNDERHILL, WHICH WAS DOCUMENT
10:31:29 5 579-3, AND IN THAT EXHIBIT, THERE'S REPRODUCED AN
10:31:34 6 E-MAIL EXCHANGE BETWEEN MR. UNDERHILL AND
10:31:37 7 MR. CHATTERJEE, THE GIST OF WHICH WAS WE WERE
10:31:45 8 ASKING FACEBOOK TO INDICATE THAT IF IT CAME INTO
10:31:49 9 POSSESSION OF THE CONNECTU STOCK, IT WOULD NOT, AS
10:31:53 10 THE NEW OWNER OF CONNECTU, DISMISS THE APPEAL.
10:31:57 11 AND MR. CHATTERJEE ESSENTIALLY DECLINED
10:32:04 12 TO ANSWER THAT, TO ANSWER THAT QUESTION.
10:32:10 13 BUT IT SEEMS QUITE CLEAR FROM, FROM THE
10:32:13 14 STATEMENTS AND FROM THE CONTEXT THAT CONNECTU IS --
10:32:17 15 THAT FACEBOOK IS MAINTAINING THAT IT WOULD HAVE THE
10:32:22 16 POWER TO DISMISS THE APPEAL THAT'S BEFORE THE NINTH
10:32:25 17 CIRCUIT NOW ON BEHALF OF CONNECTU.
10:32:28 18 SO, YOUR HONOR, WHAT YOU ARE FACED WITH
10:32:32 19 TODAY, AND RESPECTFULLY I DO NOT THINK THAT YOU
10:32:37 20 WERE FACED WITH THIS WHEN YOU DENIED THE STAY BACK
10:32:40 21 IN AUGUST, IS A SITUATION WHERE YOUR IMMEDIATE
10:32:48 22 ACTION OF ORDERING THE CONNECTU STOCK OUT OF THE
10:32:50 23 HANDS OF THE SPECIAL MASTER AND INTO THE HANDS OF
10:32:54 24 FACEBOOK, WHERE THAT ACT OF THIS COURT WOULD HAVE
10:32:57 25 THE PRACTICAL EFFECT OF ENDING OR POTENTIALLY

10:33:03 1 ENDING, BECAUSE OF THE ARGUMENTS THAT FACEBOOK HAS
10:33:07 2 SAID THAT IT'S GOING TO MAKE, CONNECTU'S APPEAL IN
10:33:10 3 THE NINTH CIRCUIT.

10:33:13 4 NOW, IF THAT HAD HAPPENED BEFORE, BEFORE
10:33:17 5 THE APPEAL HAD BEEN FILED, IT WOULD BE A DIFFERENT
10:33:20 6 CASE.

10:33:21 7 BUT NOW, BECAUSE THE APPEAL HAS BEEN
10:33:27 8 FILED, AND THE STANDARD IS, YOU KNOW, WOULD THIS --
10:33:30 9 WOULD THIS COURT'S ACTIONS ALTER OR ENLARGE THE
10:33:33 10 SCOPE OF ANY ORDER OR CHANGE THE SCOPE OF THE
10:33:36 11 ISSUES THAT ARE BEING PRESENTED TO THE NINTH
10:33:39 12 CIRCUIT, THOSE ARE SORT OF PARAPHRASING THE
10:33:42 13 STANDARDS, IN THE NINTH CIRCUIT, IN THE NINTH
10:33:48 14 CIRCUIT CASES, CLEARLY CAUSING A PARTY, CONNECTU,
10:33:53 15 WHICH NOT ONLY HAS FILED A NOTICE OF APPEAL, BUT
10:33:56 16 HAS ACTUALLY FILED ITS BRIEF ON THE MERITS IN THE
10:33:59 17 NINTH CIRCUIT ON OCTOBER 6TH, CLEARLY REMOVING THAT
10:34:04 18 PARTY FROM THE APPEAL AND, AND, AND ENDING THAT
10:34:09 19 PARTY'S ABILITY TO PURSUE ITS RIGHTS ON APPEAL IS A
10:34:15 20 VAST CHANGE, HOWEVER YOU PHRASE IT, IN THE SCOPE OF
10:34:20 21 THE ISSUES THAT ARE BEFORE THE NINTH CIRCUIT. IT
10:34:24 22 IS CHANGING THE SCOPE OF WHAT IS GOING ON IN THE
10:34:28 23 NINTH CIRCUIT.

10:34:29 24 SO MR. CHATTERJEE POINTED OUT THAT THE
10:34:34 25 COURT HAS AUTHORITY TO IMPLEMENT THE JUDGMENT, AND

10:34:38 1 I THINK THAT THAT'S TRUE.

10:34:40 2 BUT THIS IS NOT MERELY IMPLEMENTING THE

10:34:42 3 JUDGMENT WHEN YOU HAVE THE ADDITIONAL FACTS THAT

10:34:45 4 THE APPEAL IS ALREADY IN PROGRESS IN THE NINTH

10:34:49 5 CIRCUIT WITH THE NOTICE OF APPEAL AND THE BRIEFS

10:34:52 6 FILED, AND, AND THERE IS THE, THE VERY REAL AND

10:34:59 7 IMMEDIATE RISK THAT IF THE STOCK GOES OVER TO

10:35:01 8 FACEBOOK, THEN THAT APPEAL, BY THAT PARTY,

10:35:06 9 CONNECTU, WILL SIMPLY END.

10:35:08 10 THEY'RE IN THE NINTH CIRCUIT NOW, AND

10:35:11 11 SUDDENLY THEY'RE NOT IN THE NINTH CIRCUIT.

10:35:13 12 THAT -- THE COURT HAS RECOGNIZED THAT

10:35:15 13 THAT RIGHT OF APPEAL IS A SUBSTANTIAL RIGHT, THAT

10:35:17 14 THE LOSS OF THAT RIGHT CAN CERTAINLY CONSTITUTE

10:35:20 15 IRREPARABLE INJURY.

10:35:22 16 AND THAT, YOUR HONOR, IS WHAT I SUBMIT IS

10:35:28 17 THE BASIS FOR SAYING THAT THE COURT DOESN'T HAVE

10:35:31 18 JURISDICTION NOW, NOW THAT THE NINTH CIRCUIT

10:35:35 19 PROCEEDINGS ARE ONGOING, TO, IN EFFECT, LITERALLY

10:35:41 20 CHANGE WHO THE PARTIES ARE WHO ARE NOW BEFORE THE

10:35:45 21 NINTH CIRCUIT.

10:35:47 22 NOW, MR. CHATTERJEE HAS POINTED OUT

10:35:51 23 BEFORE, AND IT IS THE CASE, THAT, AS YOUR HONOR

10:35:55 24 RECALLS, THE FOUNDERS OF CONNECTU, THE INDIVIDUALS,

10:36:00 25 ARE ALSO PURSUING AN APPEAL IN THE NINTH CIRCUIT.

10:36:08 1 THERE ARE A COUPLE OF POINTS WITH RESPECT

10:36:10 2 TO THAT.

10:36:10 3 I DON'T THINK THAT THAT CHANGES THE

10:36:13 4 FUNDAMENTAL JURISDICTIONAL QUESTION, WHICH IS,

10:36:16 5 WHICH IS CAN THIS COURT, IN A CASE THAT IS ALREADY

10:36:19 6 PENDING IN THE NINTH CIRCUIT, EFFECTIVELY CHANGE

10:36:22 7 THE IDENTITY OF THE PARTIES TO THAT APPEAL?

10:36:25 8 SECONDLY, THE INTEREST -- WHATEVER THE

10:36:30 9 INTERESTS ARE, THE INTERESTS OF THE SHAREHOLDERS --

10:36:35 10 AND IT'S ONLY THREE OUT OF THE FOUR SHAREHOLDERS,

10:36:38 11 YOUR HONOR WILL RECALL, WHO ARE ACTUALLY PARTIES IN

10:36:41 12 THIS CASE IN ANY WAY, ARGUABLY, OR IN THE NINTH

10:36:46 13 CIRCUIT, SO IT'S NOT ALL OF THE SHAREHOLDERS --

10:36:48 14 THAT'S A FURTHER LACK OF IDENTITY BETWEEN THE

10:36:51 15 SHAREHOLDERS AND CONNECTU.

10:36:53 16 BUT AS A LEGAL MATTER, A CORPORATION HAS

10:36:57 17 A SEPARATE LEGAL EXISTENCE AND SEPARATE LEGAL

10:36:59 18 RIGHTS FROM ITS INDIVIDUAL SHAREHOLDERS.

10:37:04 19 SO THE DEPRIVATION OF THAT CORPORATION'S

10:37:07 20 RIGHT TO APPEAL, HAVING, YOU KNOW, ALREADY FILED

10:37:14 21 AND EVEN BRIEFED AN APPEAL IN THE COURT OF APPEALS,

10:37:18 22 WE BELIEVE REMOVES JURISDICTION TO MAKE THAT, THAT

10:37:25 23 DISTRIBUTION OF THE CONNECTU STOCK OUT OF THE HANDS

10:37:31 24 OF THE SPECIAL MASTER .

10:37:32 25 THE COURT: HAVE YOU LOOKED AT THAT

10:37:35 1 QUESTION? IT SEEMS TO ME THAT I HAVEN'T PAID CLOSE

10:37:46 2 ATTENTION TO WHAT IS GOING ON IN THE CIRCUIT.

10:37:49 3 MR. BARRETT: UM-HUM.

10:37:50 4 THE COURT: I WAIT UNTIL THEY ISSUE

10:37:52 5 MANDATES TO ME AND THEN I PAY ATTENTION.

10:37:54 6 AND I HAVEN'T FOLLOWED THE BRIEFING,

10:37:57 7 ALTHOUGH THERE WAS A BRIEF THAT WAS ATTACHED TO

10:37:59 8 THESE PAPERS THAT I LEAFED THROUGH.

10:38:01 9 MR. BARRETT: YES.

10:38:01 10 THE COURT: BUT AM I TO UNDERSTAND THAT

10:38:06 11 THERE IS A CURRENT APPEAL, OR MORE THAN ONE APPEAL

10:38:11 12 PENDING?

10:38:11 13 MR. BARRETT: YEAH. YOUR HONOR, I THINK

10:38:13 14 TECHNICALLY THERE ARE THREE APPEALS PENDING. THEY

10:38:18 15 HAVE ALL BEEN CONSOLIDATED BY THE NINTH CIRCUIT.

10:38:22 16 THE COURT: WHAT IS IT, THEN, THAT LEADS

10:38:24 17 YOU TO BELIEVE THAT IF THE ORDER TO SHOW CAUSE IS

10:38:34 18 IMPLEMENTED BY CLOSING OUT THE DUTIES OF THE MASTER

10:38:41 19 AND ORDERING THIS CONSIDERATION PAID OVER --

10:38:44 20 MR. BARRETT: UM-HUM.

10:38:45 21 THE COURT: -- THAT WOULD MOOT THE

10:38:47 22 APPEAL?

10:38:48 23 MR. BARRETT: I DON'T NECESSARILY BELIEVE

10:38:49 24 IT WOULD MOOT THE APPEAL ENTIRELY.

10:38:53 25 THERE -- LET ME JUST -- I CAN ACTUALLY BE

10:38:55 1 VERY SPECIFIC, THOUGH.

10:38:57 2 THE THREE APPEALS ARE AS FOLLOWS: THE

10:38:59 3 FIRST FILED ONE WAS THE APPEAL FILED BY CONNECTU.

10:39:03 4 THE SECOND -- I THINK I'VE GOT THE ORDER

10:39:05 5 CORRECT -- THE SECOND APPEAL THAT WAS FILED WAS

10:39:08 6 FILED BY THE FOUNDERS FOLLOWING YOUR HONOR'S DENIAL

10:39:13 7 OF THE MOTION TO INTERVENE.

10:39:15 8 AND THE THIRD APPEAL THAT WAS FILED -- OR

10:39:21 9 MAYBE THE SECOND AND THIRD WERE IN REVERSE ORDER --

10:39:23 10 WAS A CROSS-APPEAL BY CONNECTU, IN WHICH --

10:39:27 11 MR. PARKE: BY FACEBOOK.

10:39:28 12 MR. BARRETT: -- BY FACEBOOK, I'M

10:39:30 13 SORRY -- BY FACEBOOK IN WHICH FACEBOOK APPEALS FROM

10:39:34 14 AN EARLIER ORDER NOT BY YOUR HONOR BUT BY ANOTHER

10:39:38 15 JUDGE WHICH GRANTED THE FOUNDERS' MOTION TO DISMISS

10:39:42 16 FOR LACK OF PERSONAL JURISDICTION.

10:39:44 17 SO THOSE ARE THE THREE APPEALS, AND THOSE

10:39:47 18 WERE ACTUALLY THREE SEPARATE DOCKET NUMBERS.

10:39:49 19 THEY'RE CONSOLIDATED NOW FOR BRIEFING PURPOSES.

10:39:51 20 THE COURT: ALL RIGHT.

10:39:52 21 MR. BARRETT: BUT MY --

10:39:54 22 THE COURT: MY QUESTION STANDS. WHAT IS

10:39:55 23 IT THAT WOULD LEAD YOU TO --

10:39:57 24 MR. BARRETT: WELL, THE CONNECTU APPEAL,

10:39:58 25 WHICH WAS THE FIRST FILED APPEAL, THAT'S THE ONE

10:40:01 1 THAT WOULD BECOME MOOT, SO THAT CASE BEFORE THE
10:40:03 2 NINTH CIRCUIT WOULD BECOME -- WOULD ARGUABLY BECOME
10:40:06 3 MOOT.

10:40:07 4 AND, AND SO THAT'S AN ACTUAL CASE, AN
10:40:09 5 ACTUAL DOCKET NUMBER. THAT WAS NOT JOINT WITH
10:40:12 6 ANYBODY.

10:40:12 7 NOW, THERE IS THE CONSOLIDATION. WE DID
10:40:14 8 FILE A JOINT BRIEF, AND THAT'S THE BRIEF THAT YOUR
10:40:18 9 HONOR REFERRED TO THAT YOU LOOKED AT.

10:40:20 10 YOU KNOW, IN THE FIRST PLACE, IT'S NOT
10:40:23 11 100 PERCENT CERTAIN WHETHER THE FOUNDERS WILL BE
10:40:26 12 PERMITTED BY THE COURT OF APPEALS TO APPEAL.

10:40:29 13 OBVIOUSLY YOUR HONOR RULED THAT THEY WERE
10:40:30 14 PARTIES AND THAT THEY WERE ENTITLED TO APPEAL.

10:40:33 15 WE THINK THEY WERE ALSO -- IF THAT'S
10:40:36 16 INCORRECT, THAT THEY WERE ENTITLED TO INTERVENE AND
10:40:38 17 APPEAL.

10:40:39 18 HOPEFULLY THOSE ARE SUCCESSFUL ARGUMENTS
10:40:42 19 ON OUR SIDE, BUT NONE OF US IN THIS COURTROOM TODAY
10:40:45 20 CAN SAY WHAT THE COURT OF APPEALS IS GOING TO DO
10:40:47 21 WITH THAT JURISDICTIONAL QUESTION OR THAT STANDING
10:40:50 22 QUESTION.

10:40:50 23 THE COURT: SO THEN THERE IS AN
10:40:51 24 OUTSTANDING QUESTION BEFORE THE CIRCUIT AS TO THE
10:40:55 25 FOUNDERS' RIGHT TO PROSECUTE AN APPEAL?

10:40:57 1 MR. BARRETT: WELL, THERE CERTAINLY COULD
10:40:58 2 BE. I DON'T KNOW.

10:40:59 3 MR. CHATTERJEE HASN'T FILED HIS BRIEF
10:41:02 4 YET, SO I DON'T KNOW IF, IF THEY'LL TAKE THAT
10:41:05 5 POSITION OR NOT.

10:41:05 6 I SUPPOSE IT'S KIND OF AN ISSUE THAT EVEN
10:41:07 7 THE COURT COULD RAISE SUA SPONTE.

10:41:11 8 BUT I BELIEVE IT'S AT LEAST A POTENTIAL,
10:41:15 9 IT'S A POTENTIAL ISSUE.

10:41:17 10 AND, SECONDLY, YOUR HONOR, I DO THINK
10:41:19 11 THAT THE RIGHTS OF THE CORPORATION ARE SEPARATE AND
10:41:21 12 INDEPENDENT AS A LEGAL MATTER FROM THE RIGHTS OF
10:41:24 13 THE SHAREHOLDERS, AND THOSE RIGHTS WOULD BE DENIED.

10:41:27 14 THE COURT: WELL, LET ME KIND OF CUT TO
10:41:35 15 THE CHASE HERE.

10:41:36 16 MR. BARRETT: UM-HUM.

10:41:37 17 THE COURT: IT DOES SEEM TO ME THAT PART
10:41:40 18 OF -- PART OF THE COURT'S CONCERN IS NOT TO DO
10:41:44 19 ANYTHING BEYOND ITS POWER, AND IF I BELIEVE THAT I
10:41:47 20 HAVE THE POWER TO IMPLEMENT THE JUDGMENT, IT SEEMS
10:41:52 21 TO ME THAT UNLESS THERE'S SOME LEGAL IMPEDIMENT TO
10:42:00 22 DOING SO, I SHOULD DO SO.

10:42:01 23 AS YOU CITE THIS QUESTION OF THE APPEAL,
10:42:07 24 ESSENTIALLY YOUR ARGUMENT IS THAT AS THE OWNER OF
10:42:14 25 THE STOCK, FACEBOOK WOULD HAVE THE RIGHT TO DISMISS

10:42:21 1 THE -- AT LEAST THE CONNECTU APPEAL.

10:42:25 2 THAT'S WHY I QUESTIONED WHETHER OR NOT

10:42:30 3 THAT'S BEEN THOUGHT THROUGH. I DON'T KNOW A LOT

10:42:32 4 ABOUT APPELLATE PROCEDURE, BUT WOULDN'T THAT

10:42:35 5 REQUIRE AN ORDER OF THE NINTH CIRCUIT PERMITTING

10:42:39 6 THE APPEAL TO BE DISMISSED? OR IS THAT SOMETHING

10:42:42 7 THAT CAN BE VOLUNTARILY DONE WITHOUT ANY RULING BY

10:42:45 8 THE CIRCUIT?

10:42:46 9 IT SEEMS TO ME THAT IF FACEBOOK GOES TO

10:42:49 10 THE APPELLATE COURT WITH A MOTION TO DISMISS THE

10:42:52 11 APPEAL, IT WOULD BE AN OPPORTUNITY FOR CONNECTU TO

10:42:55 12 ARGUE, BASED UPON THE CIRCUMSTANCES, THE MERITS OF

10:43:00 13 WHAT THE APPEAL IS ABOUT, AND THAT MOTION SHOULD BE

10:43:03 14 DENIED AND THE APPEAL ALLOWED TO PROCEED.

10:43:06 15 IF THE CIRCUIT AGREES WITH FACEBOOK THAT

10:43:08 16 THE APPEAL MAY BE DISMISSED, IT WOULD HAVE TO DO SO

10:43:15 17 IN A FASHION THAT WOULD BE AN ADJUDICATION ON THE

10:43:19 18 MERITS OF THE APPEAL, AS WELL AS ON THE STANDING OF

10:43:23 19 FACEBOOK TO MAKE THAT MOTION.

10:43:27 20 IF THE COURT OF APPEALS DENIES THAT

10:43:29 21 MOTION TO DISMISS THE APPEAL, THEN THE CONNECTU

10:43:35 22 COMPANY, AS WELL AS ITS FOUNDERS, WOULD BE ABLE TO

10:43:38 23 PURSUE THE APPEAL TO A RESOLUTION ON THE MERITS,

10:43:42 24 AND WHATEVER THAT RESOLUTION IS BY THE NINTH

10:43:48 25 CIRCUIT WOULD THEN BE REMANDED BACK TO THIS COURT

10:43:51 1 TO TAKE ACTION BASED UPON IT.

10:43:53 2 SO THE REAL CONCERN THAT THIS COURT WOULD

10:43:55 3 HAVE IS, AM I IN A POSITION IF THE CASE COMES BACK

10:43:58 4 TO ME TO TAKE WHATEVER ACTION WOULD BE REQUIRED OF

10:44:01 5 ME BY THE CIRCUIT UNDER THOSE, UNDER THOSE

10:44:03 6 CIRCUMSTANCES?

10:44:04 7 BUT I DON'T FORESEE A CIRCUMSTANCE WHERE

10:44:07 8 THE NINTH CIRCUIT WOULD SIT IDLY BY AND ALLOW

10:44:11 9 FACEBOOK TO DISMISS THE APPEAL BY CONNECTU, UNLESS

10:44:19 10 THERE IS A RULE THAT SAYS THE OWNER OF THE STOCK

10:44:21 11 CAN, IN THE FACE OF AN ONGOING APPEAL, SIMPLY

10:44:27 12 DISMISS AND THE CIRCUIT WOULD HAVE NOTHING TO SAY

10:44:29 13 ABOUT THAT.

10:44:30 14 IF THAT'S THE CASE, IS THERE ANYTHING I

10:44:32 15 SHOULD DO ABOUT THAT --

10:44:33 16 MR. BARRETT: RIGHT.

10:44:34 17 THE COURT: -- AS OPPOSED TO THE CIRCUIT?

10:44:36 18 MR. BARRETT: WELL, YOUR HONOR, A COUPLE

10:44:37 19 OF THINGS.

10:44:38 20 I MUST SAY THAT STANDING HERE, I, I DON'T

10:44:42 21 KNOW THE ANSWER TO YOUR HONOR'S PROCEDURAL

10:44:44 22 QUESTION, EXCEPT TO SAY THAT I THINK, WITH RESPECT

10:44:47 23 TO THAT, AS WITH RESPECT TO THE STANDING OF THE

10:44:51 24 FOUNDERS TO APPEAL -- AND BY THE WAY, THAT IS AN

10:44:55 25 ISSUE WHICH, IN EARLIER PROCEEDINGS IN THIS CASE,

10:44:57 1 FACEBOOK DID QUESTION THE STANDING OF THE FOUNDERS

10:45:01 2 TO APPEAL AT ALL, I THINK BASICALLY ON THE BASIS

10:45:08 3 THAT THEY HAD SOMEHOW WAIVED THEIR RIGHTS BY NOT

10:45:11 4 PARTICIPATING ACTIVELY IN THIS COURT.

10:45:14 5 MY POINT IS, WHETHER THOSE, WHETHER THOSE

10:45:17 6 ARGUMENTS ARE RIGHT OR WRONG WITH RESPECT TO THAT

10:45:21 7 OR WITH RESPECT TO THE QUESTION THAT YOUR HONOR

10:45:23 8 JUST RAISED, NONE OF US IN THIS ROOM CAN BE CERTAIN

10:45:27 9 WHAT THE CIRCUIT COURT'S RULING IS GOING TO BE.

10:45:31 10 AND IF THE NET RESULT OF THE CIRCUIT

10:45:35 11 COURT'S RULING, AND I'M SURE FACEBOOK WOULD LIKE TO

10:45:38 12 SEE THIS RESULT, IS THAT, IN EFFECT, NO ONE CAN

10:45:43 13 CHALLENGE THE MERITS OF THIS COURT'S DECISION ON

10:45:46 14 APPEAL, AND I CAN CONCEIVE OF WAYS IN WHICH THAT

10:45:49 15 COULD BE THE OUTCOME, THEN BY THE SIMPLE ACT OF

10:45:56 16 DISTRIBUTING THE STOCK FROM THE SPECIAL MASTER TO

10:46:01 17 FACEBOOK, THAT -- THAT'S WHAT -- THAT'S THE RESULT

10:46:07 18 OF THAT ACTION BY THE COURT.

10:46:09 19 NOW, YOUR HONOR, IN ANSWER TO, I THINK,

10:46:11 20 WHAT WAS AN IMPLICIT QUESTION, WHICH IS WHAT CAN WE

10:46:14 21 DO ABOUT IT, I THINK WHAT WE CAN DO IS WE CAN

10:46:19 22 MAINTAIN WHAT IS NOW THE STATUS QUO; THAT IS, LEAVE

10:46:24 23 THE SETTLEMENT CONSIDERATION IN THE HANDS OF THE

10:46:27 24 SPECIAL MASTER.

10:46:31 25 THAT -- AND WE CAN TALK ABOUT WHY THAT IS

10:46:34 1 APPROPRIATE, WHY I DON'T BELIEVE IT WOULD INJURE
10:46:37 2 FACEBOOK'S INTERESTS IN ANY WAY, NOTWITHSTANDING
10:46:40 3 MR. CHATTERJEE'S CONCERNS ABOUT FINALITY AND THE
10:46:44 4 BENEFIT OF THE BARGAIN AND SO FORTH.

10:46:46 5 BUT IT WOULD AVOID ALL OF THESE
10:46:49 6 UNCERTAINTIES, ALL OF THESE RISKS, ALL OF THESE
10:46:55 7 DIFFICULTIES WHICH ARISE.

10:46:56 8 YOUR HONOR REFERRED ALSO TO WHAT IF THE
10:46:58 9 NINTH CIRCUIT SENDS THE CASE BACK TO YOU?

10:47:01 10 OBVIOUSLY IF THE NINTH CIRCUIT AFFIRMS,
10:47:04 11 THEN IT'S EASY. ALL THE CONSIDERATION GOES OUT, WE
10:47:07 12 ALL GO HOME, THE CASE IS DONE.

10:47:09 13 IF THE NINTH CIRCUIT WERE TO REVERSE,
10:47:12 14 HOWEVER, YOUR HONOR, I THINK THAT IS IT A MUCH MORE
10:47:16 15 COMPLICATED SITUATION TO DEAL WITH IF THE
10:47:20 16 CONSIDERATION HAS BEEN DISBURSED AND IF IT JUST, IF
10:47:25 17 IT JUST STAYS WITH THE SPECIAL MASTER AT
10:47:27 18 ESSENTIALLY NO, NO INJURY TO ANY PARTY.

10:47:31 19 IT'S MORE COMPLICATED BECAUSE YOU'VE GOT
10:47:33 20 RELEASES THAT ARE OUT THERE, AT LEAST IN THE
10:47:36 21 DISTRICT OF MASSACHUSETTS -- MAYBE IT'S RELATIVELY
10:47:39 22 EASY FOR YOUR HONOR TO REINSTATE THE CASE IF THE
10:47:42 23 COURT SAYS REVERSE IN ACCORDANCE WITH THIS OPINION.

10:47:46 24 THAT'S NOT THE CASE WITH THE FIRST
10:47:48 25 CIRCUIT CASE WHERE THERE'S PRESUMABLY BEEN A

10:47:51 1 DISMISSAL MOTION, OR OTHER PROCEEDINGS. MAYBE

10:47:53 2 THERE'S EVEN BEEN AN APPEAL TO THE FIRST CIRCUIT IN

10:47:56 3 THE MEANTIME.

10:47:57 4 THE SPECIAL MASTER'S SUGGESTED THAT RULE

10:48:00 5 60(B)(5) MIGHT BE APPLICABLE, AND INDEED, IT MIGHT

10:48:04 6 BE.

10:48:06 7 BUT THE, THE ISSUE IS, IN MY MIND, WHY DO

10:48:12 8 WE NEED TO GO TO ALL OF THAT TROUBLE WHEN WE'VE GOT

10:48:18 9 A SOLUTION THAT IS VERY SIMPLE AND, AS I SAY, I

10:48:25 10 DON'T THINK PREJUDICES THE INTERESTS OF ANY PARTY,

10:48:28 11 WHICH IS FOR THE SPECIAL MASTER TO CONTINUE TO HOLD

10:48:30 12 THE CONSIDERATION, JUST AS YOUR HONOR ORDERED IN

10:48:34 13 THE ORIGINAL JUDGMENT ON JULY 3RD, PENDING FURTHER

10:48:40 14 ORDER OF THIS COURT OR THE OUTCOME OF AN APPEAL.

10:48:44 15 THAT --

10:48:44 16 THE COURT: LET ME CHECK TO SEE --

10:48:46 17 MR. CHATTERJEE, YOU STOOD UP IN THE MIDDLE OF

10:48:48 18 COUNSEL'S ARGUMENT, BUT I PRESUMED IT WAS BECAUSE

10:48:51 19 YOU WANTED TO MAKE AN OBJECTION, OR --

10:48:54 20 MR. CHATTERJEE: I DID, AND I APOLOGIZE

10:48:55 21 FOR INTERRUPTING COUNSEL'S ARGUMENT.

10:48:58 22 THERE IS ONE IMPORTANT ISSUE THAT I THINK

10:48:59 23 IS BEING OVERLOOKED HERE, YOUR HONOR.

10:49:02 24 THIS ENTIRE ISSUE ABOUT WHAT HAPPENS WITH

10:49:06 25 CONNECTU AS A COMPANY, IT WAS RAISED IN THE

10:49:08 1 PREVIOUS PROCEEDINGS. THE CONNECTU FOUNDERS AND
10:49:11 2 CONNECTU FILED AN EMERGENCY MOTION TO THE NINTH
10:49:13 3 CIRCUIT TO STOP THE DISPOSITION OF THE ASSETS, THEY
10:49:16 4 REFUSED TO PUT THE CONSIDERATION INTO THE SPECIAL
10:49:18 5 MASTER'S HANDS BECAUSE OF THE NINTH CIRCUIT APPEAL
10:49:22 6 AND BECAUSE OF THE SCHEDULING OF YOUR HONOR'S
10:49:23 7 HEARINGS.

10:49:24 8 AND ALL OF THAT WAS DENIED. THE NINTH
10:49:27 9 CIRCUIT HAS ADDRESSED THIS ISSUE. THEY HAVE
10:49:30 10 ADDRESSED THE IMMINENCE OF THE CONSIDERATION
10:49:34 11 TRANSFER TO FACEBOOK.

10:49:37 12 THAT WAS THE BASIS OF THE EMERGENCY
10:49:39 13 APPEAL THAT CONNECTU AND THE CONNECTU FOUNDERS
10:49:43 14 FILED.

10:49:43 15 THE COURT: IT'S A DIFFERENT SITUATION,
10:49:44 16 BUT I AGREE THAT THE CIRCUIT HAS WEIGHED IN, AT
10:49:48 17 LEAST WITH RESPECT TO THIS QUESTION OF A STAY OF
10:49:50 18 EXECUTION.

10:49:51 19 YOUR COMMENT, THOUGH, PROMPTS ME TO ASK
10:49:56 20 WHY, IF YOU'VE CONSIDERED IT, YOU HAVE NOT PURSUED
10:50:02 21 THAT BEYOND THE COURT'S RULING.

10:50:07 22 YOU ASKED FOR AN EMERGENCY STAY OF
10:50:08 23 EXECUTION, BUT SO FAR AS I KNOW, YOU HAVEN'T ASKED
10:50:14 24 THE CIRCUIT TO ISSUE ANY ORDER TO ME TO STAY MY
10:50:19 25 HAND BY WAY OF A WRIT OR ANYTHING OF THAT KIND,

10:50:26 1 WHICH WOULD BE BEYOND THE APPEAL ROUTE.

10:50:30 2 IF YOUR ARGUMENT IS I DON'T HAVE

10:50:31 3 JURISDICTION AND I'M ABOUT TO DO SOMETHING BEYOND

10:50:35 4 MY JURISDICTION, WHY HAVEN'T YOU PURSUED A WRIT?

10:50:38 5 MR. BARRETT: WELL, YOUR HONOR, WE -- I

10:50:40 6 GUESS WE THOUGHT THAT THE, THAT IT WOULD BE

10:50:41 7 APPROPRIATE TO PROCEED AS WE HAVE HERE TODAY,

10:50:46 8 RAISING THE CHALLENGE TO THE COURT'S JURISDICTION

10:50:49 9 IN THIS COURT IN THE FIRST INSTANCE, AS WELL AS

10:50:54 10 MAKING THE REQUEST FOR A STAY IF THE COURT'S RULING

10:50:57 11 WERE TO BE THAT THE SETTLEMENT CONSIDERATION IS

10:50:59 12 DISTRIBUTED.

10:51:00 13 THE COURT: IT'S NOT A STAY. YOU'VE

10:51:01 14 ALREADY EXHAUSTED THAT, I THINK.

10:51:03 15 MR. BARRETT: WELL, YOUR HONOR --

10:51:04 16 THE COURT: BUT IT COULD BE THAT THE

10:51:05 17 CIRCUIT WOULD RECONSIDER THE STAY.

10:51:08 18 A WRIT PROCEEDS FROM A DIFFERENT LEGAL

10:51:10 19 PROPOSITION. IT IS THAT THE COURT IS ABOUT TO DO

10:51:12 20 SOMETHING BEYOND ITS DISCRETION.

10:51:16 21 A STAY IS WITHIN THE COURT'S DISCRETION,

10:51:19 22 AND IF YOUR ARGUMENT HERE IS THAT THE COURT HAS NO

10:51:24 23 DISCRETION BUT TO HOLD THESE PROCEEDS AND IT CANNOT

10:51:27 24 PROCEED BASED UPON THE PRESENCE OF AN APPEAL, THAT

10:51:30 25 SEEMS TO ME TO INVITE -- IF I BELIEVE YOU'RE WRONG

10:51:36 1 AND I'M ABOUT TO TAKE AN ACTION IN RESPONSE TO THIS
10:51:39 2 ORDER TO SHOW CAUSE, YOU HAD A BASIS FOR SEEKING
10:51:41 3 THAT WRIT.

10:51:42 4 AND IT SEEMS TO ME THAT THE FAIREST THING
10:51:44 5 FOR THE COURT TO DO, IF IT IS DETERMINED TO
10:51:47 6 PROCEED, WOULD BE TO STAY ITS HAND FOR A DAY OR TWO
10:51:50 7 TO ALLOW YOU TO SEEK THAT KIND OF A WRIT ASKING THE
10:51:55 8 COURT TO, TO STOP ME ON THE GROUNDS THAT I'M
10:52:00 9 EXCEEDING MY AUTHORITY.

10:52:01 10 MR. BARRETT: YOUR HONOR, PERHAPS, YOU
10:52:06 11 KNOW, IT CERTAINLY WOULD BE AN AVAILABLE PROCEDURAL
10:52:10 12 ROUTE.

10:52:10 13 I GUESS OUR VIEW WAS IF WE PRESENTED BOTH
10:52:13 14 THAT ARGUMENT AND THE OTHER ARGUMENTS TO THIS
10:52:17 15 COURT, YOU KNOW, THERE ARE MANY SITUATIONS IN WHICH
10:52:20 16 THE COURT IS, IS PRESENTED WITH A, WITH AN ARGUMENT
10:52:24 17 THAT IT LACKS JURISDICTION TO PROCEED.

10:52:29 18 AND I'M NOT SURE THAT THE CIRCUIT WOULD,
10:52:32 19 YOU KNOW, WOULD LIKE COUNSEL WHO HAD THOSE
10:52:34 20 ARGUMENTS TO BE SEEKING WRITS EVERY TIME WE BELIEVE
10:52:39 21 THAT TO BE THE CASE.

10:52:42 22 AND I THINK THAT THE COURT WILL MAKE A
10:52:44 23 FAIR DETERMINATION BASED ON ITS VIEW OF THE LAW AND
10:52:47 24 THE FACTS.

10:52:48 25 I DO WANT TO ADDRESS, THOUGH,

10:52:51 1 MR. CHATTERJEE'S -- THE ARGUMENT THAT

10:52:54 2 MR. CHATTERJEE JUST MADE AND THAT THE COURT ALLUDED

10:52:57 3 TO RELATING TO THE CIRCUIT'S PRIOR, OR PREVIOUS

10:53:01 4 DENIAL OF THE MOTION FOR A STAY.

10:53:06 5 AND I THINK, YOUR HONOR, YOU WERE EXACTLY

10:53:09 6 RIGHT WHEN YOU SAID THAT THE CIRCUMSTANCES ARE

10:53:12 7 DIFFERENT NOW.

10:53:14 8 AND I THINK THE CLEAREST INDICATION OF

10:53:17 9 THAT IS THE FACT THAT THE -- IN ITS DECISION, THE

10:53:20 10 CIRCUIT DIDN'T GIVE MUCH, MUCH OF AN EXPLANATION.

10:53:25 11 ESSENTIALLY THE DECISION ON THE MERITS

10:53:28 12 WAS, THE MOTION FOR A STAY IS DENIED, AND THEY

10:53:32 13 CITED TWO CASES.

10:53:33 14 ONE WAS THE GOLDEN GATE CASE, WHICH I

10:53:36 15 TAKE IT IS THE COURT'S MOST RECENT PRONOUNCEMENT ON

10:53:40 16 THE GENERAL STANDARDS FOR A STAY PENDING APPEAL,

10:53:44 17 AND I THINK FACTUALLY THAT IS NOT PARTICULARLY

10:53:50 18 INSTRUCTIVE IN THIS CASE.

10:53:51 19 THE OTHER CASE, THE SECOND CASE WHICH THE

10:53:53 20 COURT OF APPEALS CITED WAS THE CASE OF LOPEZ

10:53:58 21 AGAINST HECKLER, WHICH I BELIEVE YOUR HONOR ALSO

10:54:01 22 CITED, AND IT CITED IN PARTICULAR PAGE 1435 OF 713

10:54:11 23 F.2D IN THAT LOPEZ CASE.

10:54:13 24 AND THE REASON, YOUR HONOR, THAT I THINK

10:54:15 25 THAT IS SIGNIFICANT IS THAT ON THAT PAGE, THERE IS

10:54:17 1 A PARAGRAPH IN WHICH THE COURT DESCRIBES THE PRIOR
10:54:22 2 HISTORY OF THE CASE IN WHICH THE SECRETARY OF
10:54:26 3 HEALTH AND HUMAN SERVICES MOVED FOR A PARTIAL, OR
10:54:30 4 FOR AN EMERGENCY STAY OF THE DISTRICT COURT ORDER,
10:54:34 5 AND THE DISTRICT COURT ORDER IN THE LOPEZ CASE WAS
10:54:40 6 THAT THE SOCIAL SECURITY ADMINISTRATION HAD TO GIVE
10:54:45 7 NOTICE TO TENS OF THOUSANDS OF INDIVIDUALS WHO HAD
10:54:50 8 HAD THEIR SOCIAL SECURITY DISABILITY PAYMENTS
10:54:54 9 STOPPED ON THE GROUNDS THAT THEY WERE NO LONGER
10:54:57 10 DISABLED.

10:54:59 11 AND THE COURT HAD PREVIOUSLY RULED THAT
10:55:03 12 THE SECRETARY COULDN'T STOP THOSE PAYMENTS UNTIL
10:55:05 13 AFTER THE INDIVIDUALS HAD HAD NOTICE AND
10:55:08 14 OPPORTUNITY TO BE HEARD.

10:55:10 15 THE SECRETARY HAD ANNOUNCED THAT SHE
10:55:13 16 WASN'T GOING TO ABIDE BY THAT DECISION, AND THE
10:55:15 17 PARTIES WENT BACK TO THE DISTRICT COURT.

10:55:17 18 THE DISTRICT COURT ISSUED AN ORDER THAT
10:55:19 19 SAID, YES, YOU ARE, AND YOU'RE GOING TO SEND NOTICE
10:55:22 20 TO ALL THESE PEOPLE BY A CERTAIN DATE, AND THEN IF
10:55:26 21 THEY ASK YOU FOR IT, YOU'RE GOING TO CONDUCT
10:55:28 22 HEARINGS, AND IF THEY'RE ENTITLED, YOU'RE GOING TO
10:55:31 23 GIVE THEM BACK THEIR BENEFITS.

10:55:33 24 SO THAT WAS THE ORDER.

10:55:34 25 THE SECRETARY OF HEALTH AND HUMAN

10:55:37 1 SERVICES SOUGHT AN EMERGENCY STAY FOUR OR FIVE DAYS
10:55:41 2 BEFORE THOSE TENS OF THOUSANDS OF NOTICES TO THE
10:55:46 3 DENIED CLAIMANTS WERE GOING TO GO OUT, AND THE
10:55:50 4 COURT GAVE TWO REASONS FOR DENYING THE EMERGENCY
10:55:54 5 STAY.

10:55:55 6 THE FIRST REASON WAS THAT THE SECRETARY
10:55:57 7 HAD WAITED ABOUT 50 OR 55 DAYS FROM THE DATE OF THE
10:56:01 8 ORIGINAL ORDER UNTIL MAKING THAT STAY MOTION JUST
10:56:05 9 FOUR DAYS BEFORE THE NOTICES WERE TO GO OUT.

10:56:10 10 NOW, THAT'S ARGUABLY, YOUR HONOR -- YOUR
10:56:13 11 HONOR HAD SOME ISSUES WITH US NOT HAVING FILED THE
10:56:17 12 NOTICE OF APPEAL SOONER.

10:56:21 13 RESPECTFULLY, WE DISAGREE, AND AS WE
10:56:23 14 ARGUED AT THE TIME, WE THOUGHT THERE WERE SOME GOOD
10:56:25 15 REASONS BASED ON FACEBOOK'S CONDUCT AND TRYING TO
10:56:28 16 WORK OUT THE ISSUE THAT WE THOUGHT WE HADN'T BEEN
10:56:32 17 DILATORY.

10:56:33 18 BUT IN ANY EVENT, THAT'S ONE ASPECT OF
10:56:38 19 THE DECISION.

10:56:39 20 THE SECOND ASPECT OF THE DECISION,
10:56:40 21 THOUGH, AND I THINK THIS IS REALLY CRUCIAL, WAS
10:56:43 22 THAT THE COURT OF APPEALS SAID, "THE FACT THAT
10:56:47 23 TERMINATED RECIPIENTS BE," AND I'M QUOTING HERE,
10:56:51 24 "NOTIFIED BY AUGUST 15TH OF THEIR POTENTIAL
10:56:54 25 ELIGIBILITY FOR BENEFITS WAS THE ONLY IMMEDIATE

10:56:57 1 OBLIGATION IMPOSED UPON THE GOVERNMENT.

10:57:01 2 "WE REASONED THAT THE BULK OF THE

10:57:04 3 ADMINISTRATIVE COSTS AND THE COSTS OF REINSTATING

10:57:08 4 BENEFITS, THE SOURCE OF THE INJURY WHICH THE

10:57:11 5 SECRETARY ARGUES JUSTIFIES A STAY, WOULD NOT START

10:57:14 6 TO ACCRUE UNTIL LATER WHEN THE FORMER RECIPIENTS

10:57:18 7 BEGAN REAPPLYING FOR BENEFITS.

10:57:22 8 "THUS, WE SAW NO NECESSITY TO ISSUE A

10:57:25 9 TEMPORARY STAY PENDING APPEAL ON AN EMERGENCY

10:57:29 10 BASIS, ESPECIALLY GIVEN THE SECRETARY'S UNEXPLAINED

10:57:33 11 DELAY."

10:57:34 12 SO WHAT THE COURT REALLY FOCussed ON WAS,

10:57:38 13 WHAT WAS THE IMMEDIATE INJURY THAT WAS GOING TO BE

10:57:41 14 SUFFERED BY THE PARTY SEEKING THE STAY?

10:57:43 15 YOUR HONOR, I THINK THAT IS REALLY

10:57:46 16 EXACTLY ANALOGOUS TO THIS CASE.

10:57:50 17 AT THE TIME WE MADE THAT MOTION, THE

10:57:54 18 ORDER OF THE COURT WAS, GIVE THE STOCK TO THE

10:57:57 19 SPECIAL MASTER.

10:58:03 20 THAT TENDERING OF THE STOCK TO THE

10:58:05 21 SPECIAL MASTER WAS SUBJECT TO THE FINAL PARAGRAPH

10:58:08 22 OF THE FINAL JUDGMENT, WHICH SAID THE SPECIAL

10:58:13 23 MASTER CAN'T DO ANYTHING WITHOUT FURTHER ORDER OF

10:58:15 24 THE COURT.

10:58:16 25 SO IT'S OUR VIEW, YOUR HONOR, THAT WHEN

10:58:19 1 THE COURT OF APPEALS CITED THE LOPEZ CASE AS THE
10:58:23 2 GROUND FOR DENYING THE STAY, WHAT -- CERTAINLY A
10:58:29 3 VERY SIGNIFICANT PART OF THAT DECISION WAS THAT WE
10:58:34 4 WERE NOT GOING TO SUFFER ANY IMMEDIATE IRREPARABLE
10:58:39 5 INJURY BECAUSE THE STOCK WAS JUST GOING INTO THE
10:58:41 6 HANDS OF THE SPECIAL MASTER WHERE THE INJURIES IN
10:58:45 7 TERMS OF LOSS OF APPEAL RIGHTS AND SO FORTH,
10:58:47 8 POTENTIAL LOSS OF APPEAL RIGHTS ACCORDING TO
10:58:50 9 FACEBOOK, AND SO FORTH WOULD NOT BE SUFFERED.
10:58:53 10 NOW, HOWEVER, AND I -- THAT'S WHY I COME
10:58:57 11 BACK TO THIS POINT. THE SITUATION HAS CHANGED.
10:59:00 12 WE ARE NOT TALKING ABOUT THAT LOSS BEING
10:59:03 13 POTENTIALLY DAYS, WEEKS, MONTHS IN THE FUTURE, THAT
10:59:08 14 LOSS OF APPEAL RIGHTS.
10:59:09 15 WE ARE TALKING ABOUT IT BEING IMMINENT.
10:59:12 16 WE ARE TALKING ABOUT THE COURT'S VERY ACT OF
10:59:15 17 ORDERING THE DISTRIBUTION WOULD RESULT IN OUR
10:59:20 18 POTENTIALLY LOSING THE APPEAL, THE APPEAL RIGHTS IN
10:59:24 19 VIEW OF FACEBOOK'S INTERPRETATION OF THE LAW.
10:59:27 20 SO YOU, YOU HAVE -- YOU HAVE A SITUATION
10:59:31 21 WHERE, WHERE LOPEZ SEEMED TO SUGGEST THAT THE
10:59:35 22 EARLIER STAY REQUEST WAS DENIED, IN EFFECT, BECAUSE
10:59:39 23 IT WAS PREMATURE.
10:59:41 24 ALL WE WERE FACED WITH WAS, WAS DOING A
10:59:44 25 QUASI MINISTERIAL ACT, GIVING THE SHARES TO THE

10:59:48 1 SPECIAL MASTER.

10:59:49 2 YES, WE WERE WORRIED AT THAT TIME ABOUT

10:59:51 3 WHAT THE ULTIMATE RESULT MIGHT BE, BUT THAT

10:59:54 4 COULDN'T HAPPEN UNTIL WE HAD EXACTLY THE

10:59:57 5 OPPORTUNITY THAT WE HAVE HERE TODAY, WHICH IS TO

10:59:59 6 HAVE NOTICE AND AN OPPORTUNITY TO PERSUADE THE

11:00:01 7 COURT NOT TO MAKE THAT DISTRIBUTION.

11:00:04 8 BUT --

11:00:04 9 THE COURT: WELL, YOU'RE BEING QUITE

11:00:06 10 COMPLETE, AND I REALLY APPRECIATE IT, IN YOUR

11:00:09 11 RECITATION OF THE CIRCUMSTANCES, AND PART OF WHAT

11:00:17 12 YOU'VE SAID I RECOGNIZE.

11:00:19 13 IT DOES SEEM TO ME A DIFFERENT

11:00:22 14 PROPOSITION FOR THIS COURT TO ORDER A STAY SO THAT

11:00:25 15 IT CAN CONSIDER MATTERS BEFORE IT THAN FOR THE

11:00:29 16 COURT TO ORDER A STAY SO THAT THE NINTH CIRCUIT CAN

11:00:32 17 CONSIDER MATTERS BEFORE IT --

11:00:34 18 MR. BARRETT: UM-HUM.

11:00:35 19 THE COURT: -- WHEN THE NINTH CIRCUIT IS

11:00:36 20 PERFECTLY CAPABLE OF MAKING ITS OWN JUDGMENT ABOUT

11:00:41 21 THAT.

11:00:41 22 AND FOR ME TO PROTECT THE JURISDICTION OF

11:00:43 23 THE NINTH CIRCUIT BY ISSUING A STAY UNDER

11:00:46 24 CIRCUMSTANCES WHERE I'VE ALREADY MADE MY JUDGMENT

11:00:49 25 AND MY ASSESSMENT OF IT IS A DIFFERENT, A DIFFERENT

11:00:54 1 MATTER.

11:00:55 2 IF I UNDERSTANDING WHAT YOU'RE SAYING, IT

11:00:59 3 IS THAT YOU NEED TO GO THROUGH THIS PROCEDURE TO

11:01:02 4 PUT YOURSELF IN THE POSITION OF NOW SUBMITTING TO

11:01:06 5 THE NINTH CIRCUIT EITHER A REQUEST FOR A STAY OR A

11:01:10 6 REQUEST FOR A WRIT, AND I CAN UNDERSTAND, THEN, WHY

11:01:13 7 YOU WOULD GO THROUGH THIS PROCESS, BECAUSE UNLESS

11:01:22 8 I'M PERSUADED THAT I DON'T HAVE THE AUTHORITY, IT

11:01:27 9 SEEMS TO ME THAT THERE ARE TWO SIDES TO THE APPEAL

11:01:29 10 THAT YOU'RE CITING.

11:01:31 11 THERE IS THE SIDE THAT YOU'RE CITING,

11:01:34 12 WHICH IS THE CONNECTU SIDE WHICH WOULD, IF IT HAS

11:01:38 13 TO FOLLOW THROUGH WITH ITS SETTLEMENT, LOSE CONTROL

11:01:42 14 OF THE COMPANY; AND THEN THERE'S THE FACEBOOK SIDE

11:01:45 15 WHICH IS SEEKING TO GAIN CONTROL.

11:01:49 16 THAT'S -- THAT'S JUST DESCRIBING TO ME

11:01:51 17 THE NATURE OF THE PROBLEM.

11:01:52 18 AND YOUR ARGUMENT IS THAT I SHOULD FAVOR

11:01:56 19 ONE SIDE OVER THE OTHER IN THAT APPEAL BY SIMPLY

11:02:00 20 SAYING THAT FACEBOOK WON'T SUFFER ANY INJURY IF

11:02:04 21 IT'S DENIED THE CONTROL THAT IT BARGAINED FOR, AND

11:02:08 22 I UNDERSTAND THAT THERE ARE SOME ECONOMIC REASONS

11:02:11 23 WHY THAT ARGUMENT IS MADE INSOFAR AS CONNECTU IS

11:02:15 24 CONCERNED .

11:02:16 25 THE ARGUMENT I'VE HEARD MADE IN THE PAST

11:02:18 1 IS, WELL, THE COMPANY ISN'T REALLY ACTIVE, IT
11:02:22 2 REALLY DOESN'T MAKE ANY MONEY, IT'S NOT REALLY
11:02:25 3 LOSING ANY MONEY, IT'S JUST THERE AND, THEREFORE,
11:02:27 4 TO ALLOW IT TO BE THE WAY IT IS DOESN'T HURT
11:02:30 5 FACEBOOK.

11:02:31 6 BUT THAT DENIES FACEBOOK THE RIGHT TO
11:02:33 7 MAKE THE COMPANY INTO SOMETHING BETTER THAN IT IS,
11:02:36 8 TO PURSUE IT ON AN ECONOMICALLY VIABLE BASIS, TO
11:02:40 9 EXPLOIT IT IN THE WAY THAT IT WOULD WANT TO EXPLOIT
11:02:43 10 IT SO THAT THE TIME VALUE OF AN EIGHT MONTH DELAY
11:02:46 11 HAS AN EFFECT ON FACEBOOK.

11:02:48 12 SO I CAN'T IGNORE ONE IN FAVOR OF THE
11:02:52 13 OTHER, ESPECIALLY UNDER CIRCUMSTANCES WHERE I'M
11:02:55 14 PERSUADED THAT THE PARTIES SAT DOWN AT A BARGAINING
11:02:58 15 TABLE AND THEY AGREED TO THAT EXCHANGE.

11:03:00 16 MR. BARRETT: SURE, SURE.

11:03:02 17 WELL, YOUR HONOR, IF I COULD -- YOUR
11:03:03 18 HONOR SUMMED IT UP VERY WELL, AND IF I COULD JUST
11:03:06 19 RESPOND BRIEFLY TO THAT?

11:03:07 20 I DO THINK IT IS A SITUATION WHERE, YOU
11:03:10 21 KNOW, YOU REALLY ARE BALANCING THE HARSHIPS OR
11:03:15 22 DETERIMENTS TO THE PARTIES, IF YOU WILL.

11:03:20 23 AND I'LL JUST REMIND THE COURT THAT THE
11:03:22 24 RECORD DOES INDICATE THAT, FIRST OF ALL, ANY COSTS
11:03:26 25 ASSOCIATED WITH ANY LITIGATION THAT CONNECTU IS

11:03:30 1 INVOLVED IN, AND THAT INCLUDES BOTH THE APPEAL AND
11:03:36 2 THE DISPUTE WITH QUINN, EMANUEL, THE RECORD IS VERY
11:03:40 3 CLEAR THAT THOSE COSTS ARE NOT BEING PAID BY
11:03:43 4 CONNECTU. THEY'RE BEING PAID BY THE SHAREHOLDERS.
11:03:47 5 SO ONE ISSUE THAT HAD BEEN RAISED BEFORE
11:03:50 6 WAS, IN EFFECT, THAT THE COMPANY WAS GETTING --
11:03:56 7 LOOTED WOULD BE THE WRONG WORD -- BUT WAS INCURRING
11:03:59 8 DEBTS OR OBLIGATIONS, AND THAT IS SIMPLY NOT THE
11:04:02 9 CASE. THE RECORD SHOWS THAT IT'S NOT THE CASE.
11:04:05 10 THERE'S ALSO, OF COURSE, THE CLAIM THAT
11:04:07 11 QUINN, EMANUEL HAS MADE AGAINST CONNECTU, BUT THAT
11:04:11 12 CLAIM PREEXISTED, YOU KNOW, THIS, THIS JUDGMENT
11:04:15 13 PROCESS. THAT CLAIM WAS MADE AS EARLY AS LAST
11:04:19 14 APRIL.
11:04:21 15 SO THAT'S -- THAT ISN'T CHANGED BY
11:04:23 16 ANYTHING THAT'S GOING TO HAPPEN HERE.
11:04:27 17 AND THEN, FINALLY, WITH RESPECT TO THE
11:04:30 18 CONNECTU BUSINESS, WHAT WAS SAID HERE ON AUGUST 6TH
11:04:35 19 WAS THAT CONNECTU, OR THE SHAREHOLDERS, DON'T HAVE
11:04:42 20 ANY OBJECTION TO MR. FISHER OPERATING THE BUSINESS,
11:04:46 21 AND WE TALKED ABOUT THE BUSINESS ESSENTIALLY
11:04:48 22 REQUIRING WRITING A CHECK FOR A SERVER ONCE A
11:04:52 23 MONTH.
11:04:53 24 AND IN FACT, MR. UNDERHILL SAID, "YOUR
11:04:56 25 HONOR, WE WOULD EVEN BE WILLING TO LET FACEBOOK

11:04:59 1 OPERATE THE BUSINESS."

11:05:00 2 AND SO IT'S NOT -- AND MR. -- AND

11:05:10 3 MR. FISHER INDICATED THAT AT LEAST IF IT WAS NOT A,

11:05:15 4 A COMPLEX PROJECT, HE WOULD BE WILLING TO UNDERTAKE

11:05:18 5 THAT RESPONSIBILITY.

11:05:19 6 SO I UNDERSTAND WHAT THE COURT IS SAYING

11:05:23 7 ABOUT FACEBOOK'S RIGHT TO TAKE THE CONNECTU

11:05:27 8 BUSINESS AND PERHAPS TURN IT INTO SOMETHING ELSE.

11:05:30 9 THEY'VE NEVER GIVEN ANY INDICATION THAT

11:05:32 10 THEY HAVE ANY INTEREST IN DOING THAT.

11:05:35 11 THEY HAVE GIVEN EXPRESS INDICATIONS THAT

11:05:37 12 THEY WOULD LIKELY DROP THE APPEAL OR RAISE THE

11:05:49 13 DOMINIX LITIS DOCTRINE AND CONTEST THE FOUNDERS'

11:05:51 14 STANDING TO BE INVOLVED IN THE APPEAL.

11:05:55 15 SO I CERTAINLY UNDERSTAND THAT.

11:05:56 16 WE WOULD BE HAPPY TO HAVE THE APPEAL

11:05:58 17 HEARD IN THE NINTH CIRCUIT AS SOON AS THAT COULD

11:06:01 18 POSSIBLY BE ACCOMPLISHED.

11:06:04 19 WE FILED OUR BRIEF ON THE DAY THAT WE

11:06:08 20 WERE ORDERED TO IN ACCORDANCE WITH THE COURT'S

11:06:10 21 CONSOLIDATION ORDER.

11:06:13 22 FACEBOOK JUST YESTERDAY REQUESTED AND

11:06:15 23 RECEIVED A 14 DAY EXTENSION IN THE TIME FOR THE

11:06:21 24 FILING OF THEIR BRIEF.

11:06:23 25 I DON'T KNOW THAT THAT MAKES A BIG

11:06:24 1 DIFFERENCE IN WHEN THE CASE GETS ARGUED IN THE
11:06:28 2 NINTH CIRCUIT, BUT WE'RE TRYING TO PURSUE THE
11:06:31 3 APPEAL AS PROMPTLY AS WE CAN.

11:06:34 4 SO I THINK THAT YOU'RE RIGHT THAT THERE
11:06:38 5 IS, YOU KNOW, A POTENTIAL INJURY OF SOME KIND TO
11:06:44 6 FACEBOOK FROM THE DELAY, BUT THEY HAVE NOT
11:06:46 7 IDENTIFIED ANYTHING CONCRETE IN THE MANNER THAT WE
11:06:54 8 HAVE, AND I THINK IF YOU'RE GOING TO BALANCE THOSE
11:06:55 9 TWO THINGS, IT IS APPROPRIATE -- AND THEN, I GUESS,
11:07:00 10 UNDER THE STANDARD, YOU LOOK AT THE LIKELIHOOD OF
11:07:05 11 SUCCESS ON APPEAL.

11:07:07 12 WE HAVE FILED OUR APPEAL BRIEF AND THOSE
11:07:08 13 ARGUMENTS ARE THERE. OBVIOUSLY THEY DIDN'T
11:07:11 14 PERSUADE YOUR HONOR WHEN WE WERE HERE EARLIER, BUT
11:07:13 15 WE DO THINK THAT THEY'RE, YOU KNOW, VERY
11:07:16 16 SUBSTANTIAL ARGUMENTS AND LIKELY TO PREVAIL.

11:07:19 17 AND ON THAT BASIS, WE WOULD, AGAIN,
11:07:25 18 RESPECTFULLY SUGGEST THAT, YOU KNOW, WE'LL RAISE
11:07:31 19 THE JURISDICTIONAL ISSUE AND ASK THE COURT TO LEAVE
11:07:33 20 THE CONSIDERATION WITH THE SPECIAL MASTER.

11:07:36 21 THAT WOULD ALSO OBTAIN ANY ISSUES WITH
11:07:38 22 RESPECT TO THE RELEASES AND WITH RESPECT TO THE
11:07:41 23 DISMISSALS, PARTICULARLY THE DISMISSAL OF THE
11:07:44 24 MASSACHUSETTS CASE.

11:07:47 25 AND, FINALLY, IT WOULD ALSO OBTAIN ANY

11:07:51 1 ISSUE WITH RESPECT TO QUINN, EMANUEL, BECAUSE
11:07:54 2 QUINN, EMANUEL WOULD CONTINUE TO BE PROTECTED BY
11:07:58 3 THE FACT THAT THE CONSIDERATION WAS SIMPLY, IN
11:08:03 4 EFFECT, IN ESCROW IN THE HANDS OF THE SPECIAL
11:08:06 5 MASTER.

11:08:07 6 SO THE COURT WOULDN'T HAVE TO GET INTO
11:08:08 7 THAT ISSUE.

11:08:09 8 THE COURT: LET ME ASK ONE FINAL
11:08:11 9 QUESTION, AND THAT IS YOU FOCUSED SEVERAL TIMES ON
11:08:13 10 THE POTENTIAL THAT, AS THE OWNER OF THE SHARES OF
11:08:19 11 CONNECTU, FACEBOOK WOULD POTENTIALLY MOVE TO
11:08:25 12 DISMISS THE APPEAL.

11:08:27 13 IS THERE ANY OTHER HARM THAT YOU WOULD
11:08:30 14 CITE TO THE COURT THAT -- OR DETRIMENT THAT WOULD
11:08:36 15 BE SUFFERED BY CONNECTU IF I ORDER THAT THE STOCK
11:08:43 16 THAT IS SUBJECT TO THE SETTLEMENT BE TRANSFERRED?

11:08:46 17 MR. BARRETT: WELL, YOUR HONOR, I GUESS,
11:08:49 18 YOU KNOW, THERE -- FOR WHATEVER EXISTENCE THE
11:08:54 19 CONNECTU BUSINESS HAS, TO THE EXTENT THAT THAT WAS
11:08:57 20 CHANGED BY FACEBOOK AFTER THEY GOT CONTROL OF THE
11:09:02 21 ENTITY, AND THERE WERE A REVERSAL SOME MONTHS FROM
11:09:06 22 NOW IN THE NINTH CIRCUIT, PRESUMABLY COMING BACK
11:09:12 23 BEFORE YOUR HONOR AFTER A REVERSAL WOULD BE
11:09:15 24 NECESSARY TO PUT THE PARTIES BACK IN THE POSITION
11:09:17 25 THEY WERE IN BEFORE THE SETTLEMENT WAS IMPLEMENTED

11:09:20 1 AND, YOU KNOW, I DON'T KNOW WHAT DIFFICULTIES THERE
11:09:25 2 MIGHT BE IN, YOU KNOW, RESTORING THAT PRIOR STATUS
11:09:29 3 QUO WITH RESPECT TO, WITH RESPECT TO CONNECTU.
11:09:33 4 I SUPPOSE THEY COULD, YOU KNOW, PUT THE
11:09:35 5 COMPANY OUT OF EXISTENCE.
11:09:38 6 THERE ARE A LOT OF THINGS THAT COULD
11:09:39 7 HAPPEN AND WE JUST, AND WE JUST DON'T KNOW.
11:09:42 8 THERE'S ANOTHER ELEMENT OF UNCERTAINTY
11:09:44 9 WHICH I WOULD --
11:09:45 10 THE COURT: WELL, WOULDN'T YOU THINK THAT
11:09:46 11 THAT WOULD HAVE TO GO THROUGH THE NINTH CIRCUIT
11:09:51 12 BEFORE THAT TAKES PLACE?
11:09:53 13 IN OTHER WORDS, YOU WOULD ENVISION A
11:09:54 14 CIRCUMSTANCE WHERE, WITH THE APPEAL PENDING,
11:09:58 15 FACEBOOK WOULD TAKE THE STOCK, DECIDE, SINCE IT'S
11:10:03 16 THE OWNER, IT'S NOW GOING TO TAKE OUT OF THE
11:10:06 17 ORDINARY BUSINESS DECISIONS ABOUT THE COMPANY, AND
11:10:09 18 WOULD THEN PUT THE, THE -- PUT US ALL IN A
11:10:14 19 CIRCUMSTANCE WHERE THAT COULD NOT BE DONE.
11:10:17 20 YOUR ARGUMENT IS THEY COULD DO THAT EVEN
11:10:20 21 THOUGH THE APPEAL IS STILL PENDING?
11:10:23 22 MR. BARRETT: I -- YOU KNOW, I THINK THEY
11:10:25 23 COULD, YOUR HONOR. I MEAN, I THINK THAT'S EXACTLY,
11:10:27 24 AS I UNDERSTAND IT, WHY THEY, WHY THEY WANT TO GET
11:10:30 25 HOLD OF THE STOCK, GET HOLD OF THE OWNERSHIP

11:10:34 1 RIGHTS. THEY HAVE SAID THAT.

11:10:35 2 I MEAN, IN EFFECT, THAT'S WHAT FACEBOOK

11:10:38 3 IS SAYING. WE'RE WAITING. WE HAVE -- YOU KNOW, WE

11:10:41 4 BARGAINED FOR THIS AND WE WANT TO EXERCISE DOMINION

11:10:45 5 AND CONTROL OVER THIS AS SET. THAT COULD MEAN

11:10:48 6 ANYTHING.

11:10:48 7 AND UNLESS, YOU KNOW, THIS COURT ACTS OR

11:10:52 8 THE NINTH CIRCUIT ISSUES A STAY, I WOULD -- YOU

11:10:59 9 KNOW, I'M NOT SURE WHAT IT IS OTHER THAN, YOU KNOW,

11:11:02 10 THEIR OWN JUDGMENT THAT WOULD LIMIT THEIR POWER TO

11:11:05 11 DO THAT.

11:11:06 12 I MEAN, IT'S LIKE -- IT'S LIKE ANY OTHER

11:11:10 13 OWNERSHIP INTEREST. ONCE YOU HAVE IT, IT'S YOURS.

11:11:13 14 I CERTAINLY WOULD EXPECT THEM TO ARGUE

11:11:15 15 THAT, AND WE MIGHT ARGUE SOMETHING TO THE CONTRARY

11:11:17 16 IF THAT HAPPENED, BUT --

11:11:19 17 THE COURT: CAN I HAVE YOU TURN YOUR

11:11:20 18 ARGUMENT TO THE QUINN, EMANUEL LIEN ISSUE?

11:11:25 19 MR. BARRETT: CERTAINLY, YOUR HONOR.

11:11:26 20 THE COURT: IF I'M DISPOSED TO ORDER THE

11:11:30 21 IMPLEMENTATION OF THE JUDGMENT BY ORDERING THE

11:11:34 22 MASTER TO MAKE THE EXCHANGES THAT --

11:11:39 23 MR. BARRETT: UM-HUM.

11:11:41 24 THE COURT: -- ARE COVERED BY THE

11:11:43 25 SETTLEMENT AGREEMENT, WHAT WOULD YOU HAVE THE COURT

11:11:45 1 DO, IF ANYTHING, WITH RESPECT TO THE QUINN, EMANUEL
11:11:48 2 LIEN?

11:11:49 3 MR. BARRETT: YOUR HONOR, I -- QUITE
11:11:51 4 RESPECTFULLY, I WOULD SAY YOU SHOULD NOT TAKE ANY
11:11:57 5 ACTION AT ALL WITH RESPECT TO THE QUINN, EMANUEL
11:12:01 6 LIEN.

11:12:02 7 THE REASON THAT I SAY THAT IS THERE'S
11:12:05 8 A -- THERE'S A -- THERE'S SOME CALIFORNIA CASES,
11:12:08 9 ONE OF WHICH QUINN, EMANUEL CITES IN THEIR BRIEF,
11:12:12 10 CALLED CARROLL AGAINST INTERSTATE BRANDS, 99
11:12:17 11 CAL.APP 4TH 1168, AND THEY CITE THAT CASE FOR THE
11:12:23 12 PROPOSITION, ESSENTIALLY, THAT THE COURT IN WHICH
11:12:29 13 THE MAIN ACTION IS PENDING, THE ACTION WHICH GIVES
11:12:33 14 RISE TO THE LIEN, THE ACTION IN WHICH THE ATTORNEYS
11:12:37 15 PERFORMED THEIR SERVICES, THAT COURT ESSENTIALLY
11:12:39 16 HAS NO -- DOES NOT HAVE THE POWER TO MAKE AN
11:12:42 17 ADJUDICATION WITH RESPECT TO THE LIEN.

11:12:44 18 THE ADJUDICATION OF THE LIEN RIGHTS NEEDS
11:12:47 19 TO BE MADE IN A SEPARATE PROCEEDING IN A COURT THAT
11:12:51 20 IS, IS CONSIDERING THAT ISSUE.

11:12:54 21 AND AS YOUR HONOR WILL RECALL, QUINN,
11:12:58 22 EMANUEL ORIGINALLY FILED FOR ARBITRATION OF THE FEE
11:13:02 23 ISSUE IN NEW YORK BACK IN APRIL.

11:13:04 24 THERE WERE SOME JUDICIAL PROCEEDINGS IN
11:13:06 25 NEW YORK OVER THE SUMMER WHICH RESULTED IN THE

11:13:08 1 NEW YORK COURT ENTERING AN ORDER COMPELLING

11:13:13 2 ARBITRATION, AND THE PARTIES ARE NOW BACK IN THE

11:13:18 3 ARBITRABLE FORUM.

11:13:21 4 I BELIEVE THERE IS AT LEAST AN AGREEMENT

11:13:22 5 IN PRINCIPLE ON SELECTION OF THE ARBITRATORS.

11:13:26 6 YESTERDAY THE CONNECTU FOUNDERS MADE,

11:13:33 7 MADE A CLAIM IN THE ARBITRATION PROCEEDING

11:13:38 8 THEMSELVES.

11:13:39 9 SO THE ARBITRATION IS, IS PROCEEDING.

11:13:48 10 BUT THE BOTTOM LINE IS THAT IF, IF

11:13:56 11 QUINN -- IF QUINN HAD AN INTEREST IN ATTACHING THE

11:14:05 12 FUNDS AND THE STOCK THAT WOULD GO OUT UNDER, UNDER

11:14:08 13 YOUR HONOR'S QUESTION, THEY, THEY HAD PROCEDURES

11:14:14 14 THEY HAD EITHER IN COURT OR THROUGH THE ARBITRATION

11:14:17 15 FORUM, WHICH ARE THE APPROPRIATE PROCEDURES, FOR

11:14:22 16 ASSERTING THAT CLAIM.

11:14:29 17 FOR THIS COURT TO GET INTO -- AND THE

11:14:31 18 REASON THAT IT'S AN ISSUE, YOUR HONOR, IS THAT

11:14:32 19 THERE ARE SOME VERY COMPLEX FACTUAL ISSUES THAT

11:14:35 20 YOUR HONOR WOULD HAVE TO DECIDE JUST IN TERMS OF

11:14:37 21 EITHER THE PROCEDURE FOR WHAT TO DO WITH THOSE

11:14:41 22 ASSETS, OR WE WOULD ARGUE HOW MUCH OF THE

11:14:47 23 CONSIDERATION SHOULD BE DISTRIBUTED DIRECTLY TO THE

11:14:50 24 FOUNDERS? HOW MUCH SHOULD BE, SHOULD BE SUBJECT TO

11:14:55 25 HOLD BACK WITH RESPECT TO CONNECTU? HOW DO YOU

11:14:58 1 VALUE THEIR PERCENTAGE RETAINER AMOUNT? DO YOU
11:15:07 2 VALUE IT BASED ON THE HIGHER VALUE? DO YOU VALUE
11:15:11 3 IT BASED ON THE LOWER STOCK VALUE THAT YOUR HONOR
11:15:13 4 IS FAMILIAR WITH? DO YOU GIVE THEM ALL CASH? DO
11:15:18 5 THEY GET TO HOLD BACK ALL CASH? DO THEY GET TO
11:15:22 6 HOLD BACK THE CONTINGENT PERCENTAGE ON THE CASH AND
11:15:24 7 THE SAME PERCENTAGE ON THE STOCK?
11:15:26 8 THERE ARE A LOT OF DIFFERENT QUESTIONS
11:15:28 9 THAT I'M NOT SURE THIS -- AND SOME OF THOSE -- HOW
11:15:33 10 DO YOU TAKE ACCOUNT OF THE FACT THAT THE CONNECTU
11:15:35 11 FOUNDERS ARE MAKING A CLAIM AGAINST QUINN THAT IS
11:15:39 12 MUCH LARGER THAN THE AMOUNT OF THE FEES THAT ARE
11:15:44 13 BEING CLAIMED?
11:15:45 14 DO YOU MAKE ANY, ANY PRELIMINARY
11:15:49 15 DETERMINATION ON THAT WHEN YOU, WHEN YOU CONSIDER
11:15:51 16 HOW TO, HOW TO DEAL WITH THE LIEN?
11:15:55 17 AND, YOUR HONOR, SO I WOULD SUBMIT THAT
11:15:57 18 THERE ARE A LOT OF ISSUES THERE THAT IT WOULD BE
11:16:00 19 MUCH MORE APPROPRIATE FOR THE FORUM THAT'S
11:16:02 20 ADDRESSED IN THE FEE LIEN TO ADDRESS RATHER THAN
11:16:07 21 ARE ADDRESSED IN THIS COURT.
11:16:09 22 BUT IF YOU WERE GOING TO ADDRESS THE
11:16:11 23 ISSUE -- AND I WOULD THINK THAT YOU, YOU KNOW, AND
11:16:19 24 TO TRY TO BE FAIR ABOUT IT TO BOTH SIDES, YOU WOULD
11:16:22 25 NEED TO GET INTO THAT.

11:16:23 1 FINALLY, WITH RESPECT TO THE CONCERN THAT
11:16:26 2 MR. CHATTERJEE RAISED ABOUT FACEBOOK POTENTIALLY
11:16:32 3 BEING SUBJECT TO A CLAIM FROM QUINN, EMANUEL IN THE
11:16:40 4 FIRST PLACE, I THINK THAT THAT'S A VERY
11:16:43 5 HYPOTHETICAL CIRCUMSTANCE TO SAY THE LEAST.

11:16:46 6 IT PRESUMES THAT THERE'S GOING TO BE A
11:16:48 7 NET RECOVERY BY, BY QUINN, EMANUEL.

11:16:55 8 IT ALSO PRESUMES THAT -- THAT THAT --
11:16:59 9 THAT THAT JUDGMENT IN FAVOR OF QUINN, EMANUEL
11:17:02 10 WOULDN'T, YOU KNOW, WOULDN'T BE PAID BY THE PARTIES
11:17:06 11 ON THE CONNECTU SIDE.

11:17:08 12 BUT IN ANY EVENT, YOUR HONOR, I THINK
11:17:10 13 WITH RESPECT TO MR. CHATTERJEE'S -- WITH RESPECT TO
11:17:15 14 MR. CHATTERJEE'S CONCERN, YOU CAN GET GUIDANCE BY
11:17:20 15 TURNING BACK TO THE TERM SHEET AND SETTLEMENT
11:17:23 16 AGREEMENT, AS THE COURT HAS DONE A NUMBER OF TIMES
11:17:26 17 IN THIS CASE, TO DECIDE SOME OF THESE ISSUES OF
11:17:30 18 INTERPRETATION.

11:17:31 19 AND YOU'LL RECALL THAT WHAT THE TERM
11:17:34 20 SHEET SAYS IS ALL CONNECTU STOCK, I'M READING FROM
11:17:39 21 PARAGRAPH 7, IN EXCHANGE FOR X DOLLARS IN CASH, AND
11:17:45 22 X COMMON SHARES AND Y COMMON SHARES IN FACEBOOK.

11:17:49 23 IT DOESN'T SAY ANYTHING ABOUT ANY
11:17:54 24 PROTECTION FOR FACEBOOK FROM RIGHTS OF THIRD
11:17:57 25 PARTIES, YOU KNOW, ANY KIND OF LIEN HOLDERS OR

11:18:01 1 CLAIMANTS THAT MIGHT EXIST IN THE WORLD AGAINST,
11:18:05 2 AGAINST THE CONNECTU PARTIES.

11:18:07 3 AND I THINK, YOU KNOW, IF THE COURT IS,
11:18:11 4 YOU KNOW, INCLINED TO MOVE IN THAT DIRECTION, THAT
11:18:16 5 WITH RESPECT TO FACEBOOK, YOU KNOW, CASH MEANS
11:18:19 6 CASH. IT DOESN'T MEAN A CHECK PAYABLE TO TWO
11:18:23 7 PARTIES. IT DOESN'T MEAN A CHECK IN A TRUST.

11:18:26 8 IT MEANS -- YOU KNOW, IN THIS CASE IT
11:18:30 9 WOULD BE SOME RATHER LARGE SUITCASES, BUT THAT'S
11:18:33 10 LITERALLY WHAT THEY SAID.

11:18:34 11 AND IF THEY WANTED TO PROTECT THEMSELVES
11:18:37 12 AGAINST THESE KINDS OF CLAIMS, AS THE COURT HAS
11:18:39 13 SAID IN OTHER CONTEXTS, THAT SHOULD HAVE BEEN
11:18:42 14 SOMETHING THAT WAS INCLUDED IN THE AGREEMENT.

11:18:44 15 SO IF, IF THERE'S A POTENTIAL PROBLEM FOR
11:18:47 16 FACEBOOK -- AND, AGAIN, I THINK IT'S A VERY REMOTE
11:18:50 17 ONE -- IT'S REALLY A PROBLEM OF THEIR OWN MAKING IN
11:18:54 18 THAT REGARD.

11:18:55 19 THE COURT: THANK YOU, COUNSEL.

11:18:57 20 DID YOU WANT TO ADDRESS THE COURT ON
11:18:59 21 BEHALF OF QUINN, EMANUEL?

11:19:01 22 MR. VAN DALSEM: IF THE COURT IS INCLINED
11:19:04 23 TO HEAR US, I WOULD LIKE TO, YOUR HONOR.

11:19:06 24 THE COURT: OF COURSE.

11:19:06 25 MR. VAN DALSEM: AND THE REASON I SAY

11:19:08 1 THAT IS WE'RE NOT A PARTY AND WE HAVEN'T
11:19:10 2 INTERVENED, AND I'LL TOUCH UPON WHY WE HAVEN'T DONE
11:19:13 3 THAT IN MY REMARKS.

11:19:15 4 I AGREE WITH WHAT MR. BARRETT SAYS WITH
11:19:17 5 ONE SIGNIFICANT EXCEPTION, AND THAT SIGNIFICANT
11:19:19 6 EXCEPTION IS THAT THE COURT'S PROPOSAL SET FORTH IN
11:19:22 7 THE OSC WOULD ALTER THE STATUS QUO THAT WOULD HAVE
11:19:25 8 EXISTED BUT FOR THIS DISPUTE.

11:19:29 9 QUINN, EMANUEL HAS A CONTRACTUAL LIEN
11:19:32 10 OVER THIS RECOVERY, AND IN THE NORMAL COURSE,
11:19:34 11 REALLY BECAUSE OF THE LEVIN CASE WHICH WE'VE CITED,
11:19:38 12 A DEFENDANT PAYING A PLAINTIFF WILL ISSUE THE
11:19:41 13 PAYMENT INSTRUMENTS, BE THEY CHECKS OR OTHERWISE,
11:19:45 14 JOINTLY TO THE PLAINTIFF AND THEIR COUNSEL.

11:19:48 15 AND THE REASON THEY DO THAT IS BECAUSE
11:19:50 16 THE LEVIN CASE IN CALIFORNIA HOLDS THAT IF THEY'RE
11:19:53 17 ON NOTICE OF A CONTRACTUAL RIGHT OF THE LAWYERS TO
11:19:55 18 RECEIVE A PORTION OF THAT MONEY AND THEY FAIL TO
11:19:58 19 INCLUDE THE LAWYERS AS A PAYEE, THEN THE DEFENDANT,
11:20:01 20 IN THIS CASE FACEBOOK, FACES POTENTIAL LIABILITY.

11:20:06 21 SO IN THE NORMAL COURSE OF THINGS, HAD
11:20:08 22 THIS SETTLEMENT NOT BEEN CONTESTED AND IN THE
11:20:10 23 ABSENCE OF SOME WRITTEN INSTRUCTION TO FACEBOOK TO
11:20:14 24 DO OTHERWISE, FACEBOOK WOULD HAVE ISSUED THE
11:20:16 25 CONSIDERATION JOINTLY TO CONNECTU, ITS FOUNDERS,

11:20:19 1 AND THE FIRM.

11:20:20 2 AND I THINK FACEBOOK HAS TAKEN THAT

11:20:23 3 POSITION HERE AND HAS CONFIRMED THAT THAT'S WHAT

11:20:25 4 WOULD HAVE HAPPENED IN THE NORMAL COURSE.

11:20:27 5 IF THE COURT FOLLOWS THROUGH ON WHAT IT

11:20:29 6 STATED IN THE OSC, IT WOULD BE DELIVERING THE

11:20:32 7 CONSIDERATION FROM FACEBOOK DIRECTLY TO THE

11:20:34 8 CONNECTU FOUNDERS WHO COULD -- WHO WOULD THEN BE

11:20:38 9 FREE TO DO WITH IT WHATEVER THEY WISH, AND THAT

11:20:40 10 WOULD ALTER THE STATUS QUO THAT WOULD HAVE EXISTED

11:20:43 11 BUT FOR THIS DISPUTE.

11:20:45 12 AND THAT -- IN MY OPINION, THAT IS NOT

11:20:47 13 SOMETHING THE COURT SHOULD DO BECAUSE IT WOULD

11:20:49 14 DESTROY THE LIEN RIGHT.

11:20:51 15 I AGREE WITH MR. BARRETT THAT IT IS NOT

11:20:53 16 FOR THIS COURT TO ADJUDICATE ANY PORTION OF THE

11:20:56 17 DISPUTE BETWEEN QUINN, EMANUEL AND ITS FORMER

11:20:59 18 CLIENTS.

11:20:59 19 THERE'S AN ARBITRATION CLAUSE. WE HAVE

11:21:01 20 COMMENCED AN ARBITRATION IN NEW YORK BEFORE THE

11:21:05 21 TRIPLE A. THEY TRIED TO ENJOIN IT.

11:21:07 22 THAT WAS DEFEATED. JUSTICE LOWE IN THE

11:21:10 23 SUPREME COURT IN NEW YORK HELD THAT THE MATTER WAS

11:21:13 24 ARBITRABLE. THEY'VE ASSERTED COUNTERCLAIMS.

11:21:15 25 AND THAT IS THE PROPER FORUM IN WHICH TO

11:21:17 1 RESOLVE ALL OF THESE QUESTIONS AS BETWEEN QUINN,
11:21:20 2 EMANUEL AND ITS FORMER CLIENTS.

11:21:22 3 WHAT SHOULDN'T HAPPEN IN THE MEANTIME IS
11:21:24 4 THE FORMER CLIENTS OBTAIN ALL OF THE MONEY AND THEY
11:21:27 5 CAN DO WITH IT WHATEVER THEY -- WITH THAT MONEY
11:21:28 6 WHATEVER THEY WISH ONCE THEY HAVE THEIR HANDS ON IT
11:21:31 7 AND THEREBY DEFEAT OUR LIEN INTEREST.

11:21:34 8 AND THE COURT'S OSC WOULD ALTER WHO WOULD
11:21:37 9 NORMALLY BE THE PROTECTION FOR QUINN, EMANUEL UNDER
11:21:41 10 THESE CIRCUMSTANCES.

11:21:42 11 THE COURT: WELL, THE OBLIGATION THAT
11:21:46 12 YOU'RE CITING OF A CONTRACTUAL LIEN HAS NOT BEEN
11:21:52 13 ADJUDICATED AS OF YET; CORRECT?

11:21:54 14 MR. VAN DALSEM: WELL, THE LIEN IS
11:21:56 15 PERFECTED AND WE'VE CITED CASES UPON EXECUTION OF
11:21:58 16 THE FEE AGREEMENT. THE MOMENT THAT AGREEMENT WAS
11:22:01 17 SIGNED, THE LIEN WAS PERFECTED.

11:22:03 18 THE COURT: WHAT DOES IT MEAN FOR A LIEN
11:22:05 19 TO BE PERFECTED?

11:22:06 20 MR. VAN DALSEM: THAT MEANS THAT QUINN,
11:22:08 21 EMANUEL, AS COUNSEL FOR THE CONNECTU PARTIES, HAS A
11:22:11 22 LIEN OVER WHAT WERE THEN CAUSES OF ACTION, WHICH
11:22:14 23 WERE THEN CONVERTED INTO THINGS OF VALUE AS PART OF
11:22:17 24 THE SETTLEMENT.

11:22:17 25 SO WE HAVE AN ABILITY TO THEN FORECLOSE

11:22:19 1 ON THAT LIEN, AND CALIFORNIA LAW IS VERY CLEAR THAT
11:22:22 2 WE -- THAT THAT FORECLOSURE PROCEEDING DOES NOT
11:22:25 3 HAPPEN HERE. IT HAS TO HAPPEN IN AN INDEPENDENT
11:22:28 4 ACTION BROUGHT BY THE LAWYERS AGAINST THE FORMER
11:22:30 5 CLIENTS.

11:22:32 6 WE'VE DONE THAT. THAT'S BEFORE THE
11:22:33 7 TRIPLE A IN NEW YORK AND THAT WILL PROCEED HOWEVER
11:22:35 8 IT PROCEEDS.

11:22:37 9 THE COURT: THE -- YOUR -- THE
11:22:39 10 OBLIGATION, THOUGH, IS ONLY TO FACEBOOK WITH
11:22:48 11 RESPECT TO THE LIEN?

11:22:50 12 MR. VAN DALSEM: THE OBLIGATION --
11:22:51 13 FACEBOOK FACES POTENTIAL LIABILITY IF THESE FUNDS
11:22:55 14 ARE TURNED OVER TO THE CONNECTU PARTIES WITHOUT
11:22:57 15 ACCOUNTING FOR THAT LIEN.

11:22:58 16 THE COURT: RIGHT. BUT -- AND I GUESS SO
11:23:02 17 DO THE FOUNDERS AND CONNECTU?

11:23:04 18 MR. VAN DALSEM: THAT'S CORRECT.

11:23:05 19 THE COURT: ALL RIGHT. BUT IF THE FUNDS
11:23:08 20 ARE NEVER TURNED OVER TO FACEBOOK, WHAT HAPPENS?

11:23:11 21 MR. VAN DALSEM: YOU MEAN NEVER TURNED
11:23:13 22 OVER TO CONNECTU?

11:23:14 23 THE COURT: NO, NEVER TURNED OVER BY
11:23:17 24 FACEBOOK.

11:23:18 25 MR. VAN DALSEM: OH. IF THE FUNDS ARE

11:23:20 1 NEVER TURNED OVER BY FACEBOOK, OR IN THESE
11:23:23 2 CIRCUMSTANCES, IF THEY STAY WITH THE SPECIAL
11:23:25 3 MASTER, WE'RE FINE.

11:23:25 4 MR. BARRETT IS CORRECT THAT QUINN,
11:23:28 5 EMANUEL REMAINS PROTECTED IF THE CONSIDERATION WAS
11:23:30 6 TO STAY WITH THE SPECIAL MASTER.

11:23:32 7 THE COURT: YEAH. THE REASON I'M
11:23:33 8 CONCERNED ABOUT SOME KIND OF A JOINT PAYMENT IS,
11:23:35 9 FIRST, I WOULDN'T KNOW TO WHOM TO GIVE THE MONEY OR
11:23:40 10 THE CONSIDERATION TO.

11:23:41 11 IF IT'S JOINT -- IF IT'S IN SOME JOINT
11:23:44 12 NAME, I DON'T KNOW WHERE IT PUT IT. AND UNLESS ALL
11:23:46 13 OF YOU COME TO ME AND TELL ME, WE'VE SET UP
11:23:49 14 SOMETHING FOR THAT PURPOSE, I WOULD HAVE TO CHOOSE
11:23:52 15 WHERE TO PUT THAT.

11:23:53 16 MR. VAN DALSEM: THAT'S -- I DON'T
11:23:55 17 BELIEVE THAT'S THE CASE, AND I CAN EXPLAIN.

11:23:56 18 THE COURT: ALL RIGHT.

11:23:56 19 MR. VAN DALSEM: LET'S TAKE A SIMPLE
11:23:58 20 EXAMPLE. LET'S SAY THAT THE TOTAL SETTLEMENT
11:24:00 21 CONSIDERATION WAS \$100 AND THERE WAS GOING TO BE A
11:24:03 22 CHECK MADE PAYABLE TO WHOMEVER, AND WE'LL GET TO
11:24:06 23 THAT, FOR \$100.

11:24:08 24 THE WAY THIS WOULD HAPPEN IN THE NORMAL
11:24:10 25 COURSE IS FACEBOOK WOULD WRITE THE CHECK TO

11:24:12 1 CONNECTU AND ITS LAWYERS, QUINN, EMANUEL, URQUHART,
11:24:12 2 OLIVER & HEDGES.

11:24:16 3 THEY THEN HAND THE CHECK TO ONE OF US.

11:24:18 4 WE EITHER SIT DOWN AND COME TO AN AGREEMENT, WHICH

11:24:21 5 IS OBVIOUSLY WHAT WE WOULD TRY TO DO UNDER THE

11:24:23 6 CIRCUMSTANCES, AND IF WE CAN'T COME TO AN AGREEMENT

11:24:26 7 AS TO HOW MUCH OF THAT MONEY SHOULD BE SEQUESTERED

11:24:28 8 TO SECURE THE CLAIM -- WHICH BY THE WAY, THE

11:24:31 9 CONNECTU FOUNDERS, IN THEIR BRIEF, AGREE THAT SOME

11:24:34 10 PORTION OF THAT SHOULD REMAIN LOCKED UP IN ORDER TO

11:24:37 11 SECURE THE CLAIM. THE ONLY DISPUTE IS HOW MUCH.

11:24:39 12 BUT --

11:24:40 13 THE COURT: BUT DOESN'T THE FACT THAT

11:24:41 14 IT'S MADE PAYABLE EQUALLY ADJUDICATE SOMETHING? IT

11:24:45 15 MEANS THAT IT'S 50-50?

11:24:46 16 MR. VAN DALSEM: NO, NOT AT ALL.

11:24:49 17 IF IT'S PAID JOINTLY, THERE IS -- THAT IS

11:24:50 18 NOT A DETERMINATION AS TO WHAT PERCENTAGE GOES TO

11:24:53 19 WHAT PAYEE.

11:24:54 20 SO WHAT WOULD HAPPEN IN THE NORMAL COURSE

11:24:56 21 IS THAT THE PARTIES WOULD EITHER AGREE UPON THAT

11:24:59 22 AND AGREE TO SEQUESTER AND PUT INTO TRUST A CERTAIN

11:25:03 23 AMOUNT, AND IF WE CAN'T AGREE, THE PROPER FORUM TO

11:25:06 24 DECIDE THAT WOULD BE THE ARBITRATORS IN NEW YORK

11:25:08 25 BEFORE THE TRIPLE A WHO ARE HANDLING THAT

11:25:10 1 INDEPENDENT ACTION.

11:25:11 2 THE COURT: BUT YOU EACH WOULD HAVE A

11:25:12 3 VETO? IN OTHER WORDS, YOU'D OWN IT JOINTLY. THE

11:25:15 4 FUNDS WOULD BE CONVERTED TO A PARTNERSHIP,

11:25:17 5 ESSENTIALLY, WITH EACH HAVING A 50 PERCENT

11:25:20 6 INTEREST.

11:25:20 7 MR. VAN DALSEM: NOT TRUE.

11:25:21 8 WHAT WOULD HAPPEN IS WHEN THAT CHECK

11:25:23 9 COMES IN AS, THE \$100 CHECK IN MY EXAMPLE PAYABLE

11:25:27 10 TO THE FORMER CLIENTS AND THE LAW FIRM, BOTH

11:25:30 11 PARTIES WOULD HAVE TO ENDORSE THAT CHECK BEFORE ANY

11:25:32 12 BANK WOULD CASH IT.

11:25:33 13 THE COURT: THAT'S WHAT I MEAN. SO EACH

11:25:34 14 WOULD HAVE A VETO.

11:25:36 15 MR. VAN DALSEM: WELL, THAT'S CORRECT.

11:25:37 16 SO WE EITHER COME TO AN AGREEMENT, OR IF

11:25:39 17 WE CAN'T COME TO AN AGREEMENT, WE GO TO THE PROPER

11:25:41 18 FORUM TO RESOLVE THAT, WHICH IS THE ARBITRATORS,

11:25:44 19 AND SAY, HERE'S A PAYMENT INSTRUMENT, IT'S

11:25:46 20 NON-NEGOTIABLE WITHOUT EVERYONE AGREEING TO IT, WE

11:25:49 21 CAN'T AGREE, SO THEREFORE, YOU, THE ARBITRATORS,

11:25:52 22 ARE THE PROPER FORUM TO DECIDE WHAT, IF ANY,

11:25:54 23 PORTION OF THAT SHOULD REMAIN SUBJECT TO THE LIEN

11:25:57 24 INTERESTS AND SEQUESTERED DURING THE PENDENCY OF

11:26:01 25 THAT ARBITRATION.

11:26:01 1 THE COURT: RIGHT. SO ESSENTIALLY, THEN,

11:26:03 2 THE MONEY IS HELD IN ARBITRATION UNTIL THE

11:26:05 3 ARBITRATION IS OVER.

11:26:06 4 MR. VAN DALSEM: OR SOME PORTION OF THE

11:26:08 5 MONEY.

11:26:08 6 THE COURT: THE WHOLE THING IS. IF YOU

11:26:10 7 CAN'T AGREE, WOULDN'T IT TAKE AN ADJUDICATION BY

11:26:12 8 THE ARBITRATOR OF THE PROPORTIONATE AMOUNT BEFORE

11:26:16 9 IT COULD BE RELEASED?

11:26:17 10 MR. VAN DALSEM: THEY COULD MAKE AN

11:26:18 11 INTERIM AWARD. USING MY \$100 EXAMPLE -- I'M NOT

11:26:22 12 SUGGESTING WHAT THE CONTINGENCY FEE IS, BUT IN A

11:26:25 13 TYPICAL CONTINGENCY CASE, LET'S SAY IT'S A THIRD,

11:26:28 14 WHAT THE ARBITRATORS MIGHT DO UNDER THE

11:26:30 15 CIRCUMSTANCES IS SAY, TAKE 33 CENTS, LET'S PUT THAT

11:26:34 16 INTO A SEQUESTERED ACCOUNT, AND TAKE THE OTHER 66

11:26:38 17 OR 67 CENTS AND GIVE IT TO THE CLIENTS WHO OWN

11:26:42 18 THOSE FUNDS AND OVER WHICH THE FORMER LAW FIRM HAS

11:26:42 19 NO CLAIM.

11:26:43 20 SO THAT'S TYPICALLY WHAT WOULD HAPPEN

11:26:44 21 UNDER THESE CIRCUMSTANCES.

11:26:45 22 THE COURT: THAT COULD HAPPEN.

11:26:46 23 BUT YOU COULD AVOID ALL THAT BY AGREEING

11:26:49 24 TO THAT BEFORE IT GOES TO THE ARBITRATORS. IT

11:26:52 25 PRESUMES THAT THE ARBITRATORS WILL COME TO THAT

11:26:55 1 DETERMINATION.

11:26:57 2 WHAT WOULD BE THE EFFECT IF I -- IF THERE

11:27:03 3 WAS A PROPOSED COMPLAINT AND INTERVENTION THAT WAS

11:27:07 4 SUBMITTED TO THE COURT, WHAT WOULD BE THE EFFECT OF

11:27:10 5 THE COURT ORDERING FACEBOOK TO FILE THAT COMPLAINT

11:27:15 6 AND INTERPLEADING THE FUNDS INTO THE COURT?

11:27:18 7 MR. VAN DALSEM: THAT IS A SOLUTION THAT

11:27:19 8 IS VIABLE. IT IS -- IT IS SUBJECT TO A COUPLE OF

11:27:22 9 POTENTIAL PROBLEMS.

11:27:24 10 NUMBER ONE, AS I THINK MR. BARRETT

11:27:26 11 POINTED OUT, YOU WOULD HAVE DUAL PROCEEDINGS, OR

11:27:28 12 MR. CHATTERJEE ACTUALLY POINTED OUT, YOU WOULD HAVE

11:27:31 13 DUAL PROCEEDINGS, NUMBER ONE, HERE AND IN THE

11:27:33 14 ARBITRATION IN NEW YORK.

11:27:35 15 NUMBER TWO, I HAVE SOME QUESTION UNDER

11:27:37 16 THE CARROLL CASE AS TO WHETHER THIS, THIS COURT

11:27:41 17 SHOULD REALLY BE DOING THAT IN LIGHT OF ITS MANDATE

11:27:45 18 THAT THE DISPUTE BETWEEN THE LAWYERS AND THEIR

11:27:48 19 FORMER CLIENTS SHOULD BE ADJUDICATED IN AN

11:27:51 20 APPROPRIATE NEW PROCEEDING.

11:27:53 21 SO IT CERTAINLY WOULD BE -- IT WOULD

11:27:56 22 CERTAINLY PROTECT QUINN, EMANUEL'S INTERESTS AND WE

11:27:59 23 WOULD CERTAINLY PREFER THAT RATHER THAN TO HAVE ALL

11:28:01 24 THE FUNDS TURNED OVER TO THE CONNECTU PARTIES.

11:28:04 25 THE COURT: I'LL TELL YOU THE OTHER THING

11:28:06 1 I WAS CONSIDERING, AND I RAISED IT WITH THE MASTER
11:28:09 2 THIS MORNING, IS WHY WOULDN'T IT MAKE SENSE,
11:28:11 3 BECAUSE IF I AM TO ORDER THE INTERPLEADER, FIRST
11:28:16 4 THE MONEY WOULD HAVE TO BE PAYABLE TO THE
11:28:19 5 STAKEHOLDER, THAT IS FACEBOOK, AND THEN FACEBOOK
11:28:22 6 WOULD HAVE TO INTERPLEAD IT INTO COURT SO THAT I
11:28:25 7 DON'T KNOW THAT I CAN -- OR IT WOULD HAVE TO BE
11:28:32 8 MADE PAYABLE TO CONNECTU AND CONNECTU WOULD
11:28:36 9 INTERPLEAD TO THE COURT. I'M NOT SURE HOW IT WOULD
11:28:38 10 WORK.

11:28:38 11 BUT THE QUESTION I RAISED WITH THE MASTER
11:28:41 12 IS WHETHER OR NOT IT WOULD BE FEASIBLE OR ADVISABLE
11:28:46 13 FOR THE COURT TO HAVE THE MASTER INTERPLEAD THE
11:28:50 14 FUNDS INTO COURT.

11:28:52 15 THEREFORE, THEY WOULD NEVER LEAVE THE
11:28:54 16 MASTER'S HANDS IN -- PAYABLE TO A PARTY TO THIS
11:28:59 17 LITIGATION, OR TO THE LAWYERS, OR PAYABLE JOINTLY
11:29:02 18 TO THE PARTIES OR TO A LAWYER.

11:29:04 19 AND IT WOULD THEN BE PLACED IN THE
11:29:06 20 REGISTRY OF THE COURT.

11:29:08 21 THE ONLY PROBLEM WITH THIS WHOLE
11:29:10 22 INTERVENTION, OR INTERPLEADER NOTION IS THAT IT
11:29:15 23 PUTS THE CLERK OF COURT IN A POSITION OF HOLDING ON
11:29:19 24 TO FUNDS, AND ESSENTIALLY SHARES, BECAUSE I PRESUME
11:29:25 25 THE LIEN REACHES BOTH, AND IT'S NOT QUITE THE KIND

11:29:31 1 OF THING WE DO VERY WELL AS A COURT, AND SO I AM

11:29:36 2 CONCERNED ABOUT THAT.

11:29:36 3 MR. VAN DALSEM: YOUR HONOR, AND THAT'S

11:29:38 4 ONE OF THE REASONS WHY I THINK OUR SUGGESTED

11:29:40 5 APPROACH IS PREFERABLE.

11:29:41 6 THE CONNECTU PARTIES, OR THE CONNECTU

11:29:45 7 FOUNDERS, DO NOT DISPUTE THAT SOME PORTION OF THE

11:29:47 8 SETTLEMENT CONSIDERATION SHOULD BE SET ASIDE.

11:29:51 9 THAT'S -- I THINK THEIR PAPERS WERE

11:29:52 10 PRETTY CLEAR ON THAT POINT.

11:29:57 11 SO IT IS NOT THE --

11:29:57 12 THE COURT: LET ME SEE IF I GOT THAT

11:29:58 13 RIGHT.

11:29:59 14 SO CONNECTU AND ITS FOUNDERS TAKE THE

11:30:00 15 POSITION THAT THE COURT SHOULDN'T DO ANYTHING, BUT

11:30:03 16 IF IT DOES ANYTHING, IT SHOULD ORDER THAT FUNDS AND

11:30:06 17 STOCKS BE MADE PAYABLE TO BOTH?

11:30:08 18 IS THAT THE CONNECTU POSITION?

11:30:16 19 MR. VAN DALSEM: THAT'S NOT WHAT I WAS

11:30:18 20 SUGGESTING IS THEIR POSITION.

11:30:19 21 THE COURT: OH. WELL, I THOUGHT -- HOW

11:30:22 22 DO I DO IT OTHERWISE?

11:30:23 23 MR. VAN DALSEM: WELL, IT'S NOT -- WITH

11:30:25 24 ALL DUE RESPECT, THE CASES ARE PRETTY CLEAR THAT

11:30:28 25 IT'S NOT FOR THIS COURT TO DETERMINE, OKAY, OF THAT

11:30:31 1 \$100, SO MUCH GOES INTO TRUST AND SO MUCH GETS
11:30:34 2 RELEASED.

11:30:35 3 THE COURT: NO, I'M SAYING A JOINT.

11:30:36 4 I THOUGHT THEIR POSITION -- YOU WERE

11:30:37 5 CITING TO ME THEIR POSITION WAS I SHOULD DO

11:30:40 6 NOTHING, BUT IF I DO IT, I SHOULD MAKE IT JOINTLY

11:30:43 7 IN BOTH NAMES.

11:30:44 8 THAT'S THE QUINN, EMANUEL POSITION, AND

11:30:45 9 THAT'S THE CONNECTU POSITION, AND FACEBOOK IS

11:30:48 10 PERFECTLY PROTECTED BECAUSE BOTH PARTIES WHO WOULD

11:30:50 11 BE IN RECEIPT OF THE CONSIDERATION AGREE THAT

11:30:54 12 THAT'S THE WAY TO HANDLE IT.

11:30:55 13 MR. VAN DALSEM: I AGREE THAT THE COURT

11:30:56 14 SHOULD DO NOTHING, BUT IT DEPENDS ON WHAT YOU

11:31:00 15 DEFINE "NOTHING" AS.

11:31:01 16 WHAT I WOULD DEFINE "NOTHING" AS IS

11:31:03 17 ALLOWING THE SETTLEMENT CONSIDERATION TO TRANSFER,

11:31:06 18 AS IT WOULD HAVE TRANSFERRED HAD WE NEVER BEEN

11:31:08 19 BEFORE YOUR HONOR WITH AN OBJECTION TO THE

11:31:10 20 SETTLEMENT AND EVERYTHING THAT HAS PROCEEDED OVER

11:31:13 21 THE PAST SIX MONTHS. THAT IS DOING NOTHING IN MY

11:31:17 22 VIEW.

11:31:17 23 AND IN THOSE CIRCUMSTANCES, CONNECTU

11:31:19 24 WOULD HAVE --

11:31:19 25 THE COURT: I CAN'T DO THAT ANYMORE

11:31:21 1 BECAUSE THE CONSIDERATION IS NO LONGER IN THE HANDS
11:31:23 2 OF FACEBOOK.

11:31:25 3 MR. VAN DALSEM: THAT'S CORRECT. IT
11:31:27 4 COULD BE --

11:31:27 5 THE COURT: SO I CAN'T DO THAT.

11:31:28 6 MR. VAN DALSEM: IT COULD BE RETURNED TO
11:31:30 7 FACEBOOK.

11:31:30 8 THE COURT: OH, IN OTHER WORDS, YOU WOULD
11:31:32 9 WANT ME TO HAND THE CONSIDERATION BACK TO FACEBOOK
11:31:35 10 WITH DIRECTIONS?

11:31:36 11 MR. VAN DALSEM: OR YOU SIMPLY HAVE THE
11:31:38 12 SPECIAL MASTER DO WHAT FACEBOOK WOULD HAVE
11:31:41 13 OTHERWISE DONE HAD IT NOT BEEN ORDERED TO TURN THE
11:31:43 14 CONSIDERATION --

11:31:43 15 THE COURT: SEE, FACEBOOK RUNS THE RISK,
11:31:46 16 IF ITS CONSIDERATION COMES BACK TO IT, THAT AN
11:31:48 17 ARGUMENT COULD BE MADE THAT IT'S NO LONGER IN
11:31:51 18 KEEPING WITH MY JUDGMENT, IT'S PUT ITSELF IN A
11:31:53 19 POSITION WHERE SOMETHING HAS BEEN RETURNED TO IT,
11:31:56 20 THAT MIGHT LOOK LIKE A RECISSION OF SOME SORT.

11:32:00 21 SO I'M LOOKING FOR WHAT YOUR POSITION IS
11:32:03 22 GIVEN THE FACT THAT THE CONSIDERATION IS IN THE
11:32:07 23 HANDS OF THE MASTER.

11:32:08 24 MR. VAN DALSEM: WHAT QUINN, EMANUEL
11:32:10 25 SUGGESTS BE DONE IS THAT AN ORDER ISSUE DIRECTING

11:32:12 1 THE MASTER TO ISSUE A CHECK JOINTLY PAYABLE TO

11:32:16 2 QUINN, EMANUEL AND THE FORMER CLIENTS AND TO TURN

11:32:19 3 IT OVER TO EITHER OF US.

11:32:22 4 THE COURT: WELL, THAT'S WHAT I HEARD YOU

11:32:23 5 TO SAY, AND THAT'S WHY I WAS TRYING TO MAKE SURE

11:32:24 6 THAT -- I THOUGHT YOUR POSITION WAS THAT CONNECTU

11:32:26 7 AND ITS FOUNDERS AGREE WITH THAT.

11:32:27 8 MR. VAN DALSEM: THEIR PAPERS MAKE CLEAR

11:32:30 9 THAT THEY AGREE THAT SOME PORTION OF THE SETTLEMENT

11:32:32 10 PROCEEDS SHOULD BE SET ASIDE TO SECURE THE FEE

11:32:34 11 CLAIM.

11:32:35 12 I DON'T THINK THEY'VE AGREED TO A

11:32:37 13 PARTICULAR PROCEDURE TO ACCOMPLISH THAT.

11:32:40 14 THE COURT: SO THEY DON'T AGREE?

11:32:42 15 I MEAN, EITHER YOU DO OR YOU DON'T. DO

11:32:45 16 YOU AGREE?

11:32:45 17 MR. BARRETT: YOUR HONOR, WE DON'T AGREE,

11:32:47 18 CERTAINLY, THAT THE WHOLE AMOUNT OF THE SETTLEMENT

11:32:52 19 PROCEEDS SHOULD BE SUBJECT TO THAT PROCEDURE.

11:32:54 20 THE COURT: WELL, COULD -- DO THE TWO OF

11:32:56 21 YOU AGREE ON AN AMOUNT?

11:33:00 22 MR. BARRETT: I DON'T THINK WE DO, YOUR

11:33:01 23 HONOR.

11:33:01 24 THE COURT: SO THAT LEAVES ME IN A

11:33:02 25 POSITION OF NOT HAVING AN AGREEMENT, NOT HAVING AN

11:33:05 1 AMOUNT, HAVING MY MASTER HOLD ON TO FUNDS, AND IT
11:33:08 2 DOES SEEM TO ME THAT IF I CAN TAKE NO ACTION THAT
11:33:18 3 WOULD BE IN THE FORM OF AN ADJUDICATION OF THE
11:33:21 4 PROPER PERCENTAGE, IT SOUNDS TO ME LIKE MY ORDERING
11:33:29 5 THE MASTER TO EITHER HOLD IT OR TO INTERPLEAD IT
11:33:32 6 ARE THE TWO OPTIONS THAT ARE VIABLE.
11:33:34 7 MR. VAN DALSEM: THERE'S A THIRD OPTION.
11:33:36 8 THE COURT: WHAT'S THAT?
11:33:37 9 MR. VAN DALSEM: THE THIRD OPTION IS THE
11:33:38 10 REASON WE HAVE NOT BEFORE THE TRIPLE A IN NEW YORK
11:33:42 11 TO SEEK SOME RELIEF IS THAT WE'VE HAD NO PANEL
11:33:42 12 BEFORE WHOM TO GO BEFORE.
11:33:43 13 AND THE TRIPLE A RULES REQUIRE THAT TO
11:33:46 14 SEEK INTERIM RELIEF, YOU HAVE TO HAVE A PANEL
11:33:50 15 CONSTITUTED OR THE PARTIES HAVE TO AGREE.
11:33:52 16 THAT PANEL HAS EITHER BEEN CONSTITUTED OR
11:33:54 17 IS ABOUT TO BE CONSTITUTED.
11:33:56 18 WE COULD SIMPLY LEAVE THE SETTLEMENT
11:33:57 19 CONSIDERATION FROM FACEBOOK WITH THE SPECIAL MASTER
11:33:59 20 FOR SOME PERIOD OF TIME, 30 OR 60 DAYS, AND IN THE
11:34:02 21 INTERIM, QUINN, EMANUEL WOULD GO TO THE ARBITER
11:34:05 22 PANEL AND ASK FOR AN ORDER DIRECTING HOW MUCH OF
11:34:11 23 THAT SHOULD BE SEQUESTERED.
11:34:12 24 THE COURT: YOU MAY GET THAT, YOU MAY
11:34:14 25 NOT.

11:34:14 1 IT MEANS THAT YOU'RE ASKING ME TO STAY

11:34:20 2 THE IMPLEMENTATION OF THE JUDGMENT PENDING

11:34:22 3 ARBITRATION PROCEEDINGS.

11:34:23 4 MR. BARRETT: YEAH, YOUR HONOR. I WANT

11:34:25 5 TO BE VERY CLEAR ON THAT.

11:34:26 6 CONNECTU AND THE FOUNDERS WOULD

11:34:29 7 STRENUOUSLY OBJECT TO CONSIDERATION FLOWING OUT OF

11:34:31 8 THE SPECIAL MASTER'S HANDS TO FACEBOOK AND NOT TO

11:34:35 9 US.

11:34:36 10 IF IT'S GOING TO HAPPEN, IT SHOULD BE, IT

11:34:38 11 SHOULD BE MUTUAL. IT SHOULD BE IN BOTH DIRECTIONS.

11:34:42 12 I THINK THE REASON THAT THIS PROBLEM

11:34:43 13 AROSE -- COUNSEL REFERRED TO ASKING FOR AN ORDER

11:34:49 14 FROM THE TRIPLE A PANEL.

11:34:51 15 THAT CERTAINLY WOULD BE POSSIBLE, BUT I

11:34:53 16 DON'T THINK WE KNOW WHEN THAT'S GOING TO HAPPEN.

11:34:57 17 THE FACT IS THAT THEY COULD HAVE GONE TO

11:34:59 18 COURT IN NEW YORK. NEW YORK COURTS HAVE THE

11:35:01 19 AUTHORITY TO ISSUE INTERIM ORDERS IN AID OF

11:35:04 20 ARBITRATION. THEY HAD SIX MONTHS.

11:35:06 21 THEY WERE IN FRONT OF A JUDGE. JUDGE

11:35:08 22 LOWE, I'M SURE, WOULD HAVE CONSIDERED THIS HAD IT

11:35:11 23 BEEN RAISED. THEY DIDN'T DO THAT.

11:35:13 24 SO WHEN COUNSEL TALKS ABOUT THE -- WHEN

11:35:16 25 MR. VAN DALSEM TALKS ABOUT THE NORMAL COURSE, THE

11:35:20 1 NORMAL COURSE IS THAT THE, THAT THE LAWYER SHOULD,
11:35:24 2 SHOULD NOT HAVE PUT -- SHOULD NOT BE PUTTING THIS
11:35:27 3 COURT IN THIS POSITION.

11:35:29 4 THE CARROLL CASE TELLS US THAT.

11:35:32 5 AND HAVING NOT DONE IT WHEN THEY HAD THE
11:35:34 6 OPPORTUNITY TO DO IT, I THINK IF YOU'RE GOING TO
11:35:38 7 RELEASE CONSIDERATION TO FACEBOOK, YOU SHOULD
11:35:41 8 RELEASE THE CONSIDERATION ON THE FOUNDERS' SIDE AND
11:35:45 9 THE PROCEEDINGS CAN GO FORWARD IN NEW YORK IN
11:35:48 10 WHATEVER FORUM IS, IS APPROPRIATE.

11:35:51 11 IN ADDITION, AGAIN, I COME BACK TO YOUR
11:35:56 12 HONOR EXPRESSING SOME CONCERN ABOUT, WOULD FACEBOOK
11:36:01 13 BE PROTECTED IN THIS PROCESS?

11:36:03 14 WE SUGGESTED IN OUR PAPERS THAT THE COURT
11:36:05 15 COULD ISSUE AN ORDER THAT SAYS THAT FACEBOOK,
11:36:09 16 HAVING, HAVING PROVIDED THE CONSIDERATION TO THE
11:36:11 17 SPECIAL MASTER, IS ABSOLVED OF THE LIEN.

11:36:15 18 I DON'T KNOW IF THAT WOULD BE EFFECTIVE
11:36:16 19 UNDER THE CARROLL CASE OR NOT, BUT CERTAINLY THEY
11:36:19 20 HAVE DONE WHAT YOU ORDERED THEM TO DO.

11:36:22 21 OR, SECONDLY, AS I INDICATED, THIS
11:36:27 22 REALLY -- TO THE EXTENT FACEBOOK HAS ANY SUCH
11:36:30 23 PROBLEM, IT IS A PROBLEM THAT ARISES FROM THEIR
11:36:34 24 DRAFTING OF THE TERM SHEET.

11:36:35 25 THE TERM SHEET -- WHATEVER MAY BE THE

11:36:38 1 NORMAL COURSE, IF A PARTY IN FACEBOOK'S POSITION
11:36:41 2 WANTS TO PROTECT ITSELF, THEY CAN PUT IN THE
11:36:44 3 SETTLEMENT AGREEMENT, WE'RE GOING TO MAKE THE CHECK
11:36:47 4 PAYABLE TO PARTY AND LAWYER.

11:36:48 5 THE COURT: BUT THAT'S MY POINT. I DON'T
11:36:50 6 KNOW WHY WE'RE TALKING ABOUT FACEBOOK ANY LONGER.
11:36:53 7 IT'S MY PROBLEM.

11:36:54 8 THE MONEY THAT YOU'RE EXERCISING A LIEN
11:36:56 9 OVER IS NOT IN THE HANDS -- IT'S NO LONGER IN THE
11:36:59 10 HANDS OF FACEBOOK. IT'S IN THE HANDS OF THE COURT.

11:37:02 11 AND SO WHAT I'M TRYING TO DO IS TO FIGURE
11:37:04 12 OUT A WAY TO IMPLEMENT THE JUDGMENT WITH SOMEONE
11:37:11 13 STANDING BEFORE IT ARGUING THAT, I HAVE A
11:37:14 14 CONTRACTUAL LIEN THAT I'M ASSERTING AGAINST THE
11:37:17 15 PERSON WHO WAS RECEIVING THE MONEY THAT IS BEING
11:37:20 16 HELD IN COURT.

11:37:22 17 AND FACEBOOK IS CONCERNED TO MAKE SURE,
11:37:28 18 LEGITIMATELY, THAT NO ONE COMES BACK TO IT AND
11:37:34 19 ASSERTS THAT, YOU DIDN'T DO THE RIGHT THING IN THE
11:37:36 20 FACE OF THE LIEN THAT IS BEING ASSERTED.

11:37:37 21 AND I CAN'T -- I'M NOT GOING TO MAKE AN
11:37:40 22 ADJUDICATION ABOUT THAT BECAUSE THAT ISSUE IS NOT
11:37:42 23 BEFORE ME.

11:37:43 24 WHAT I'M GOING TO DO IS TO TRY AND FIGURE
11:37:46 25 OUT HOW TO HANDLE THE PROBLEM THAT IS BEING

11:37:48 1 PRESENTED BY THIS LIEN THAT IS BEING ASSERTED

11:37:53 2 AGAINST FUNDS BEING HELD BY THE COURT THAT WOULD BE

11:37:58 3 RELEASED IN THE IMPLEMENTATION OF THE JUDGMENT.

11:38:03 4 AND WITH AN OBJECTION BY CONNECTU TO THAT

11:38:08 5 BEING RELEASED IN ANY FORM, LET ALONE IN A JOINT

11:38:12 6 FORM, IT SEEMS TO ME THAT THE QUESTION I ASKED

11:38:18 7 ABOUT ORDERING THE MASTER TO INTERPLEAD THE FUNDS

11:38:21 8 WOULD THEN -- ALTHOUGH IT'S A DUAL ADJUDICATION AND

11:38:24 9 I UNDERSTAND THAT CONCERN, THE POINT OF THE

11:38:26 10 COMPLAINT IN INTERPLEADER THAT I WOULD ORDER THE

11:38:29 11 MASTER TO FILE IS TO SAY, ALL RIGHT, HERE'S THE

11:38:32 12 MONEY, WAITING FOR THE STAKEHOLDERS TO FIGURE OUT

11:38:36 13 AMONG THEMSELVES -- I MEAN THE CLAIMANTS TO FIGURE

11:38:39 14 OUT, IN SOME ADJUDICATION -- IT DOESN'T HAVE TO BE

11:38:42 15 IN THE INTERPLEADER ACTION ITSELF, IT COULD HAPPEN

11:38:44 16 OUTSIDE OF THAT -- WHERE THOSE FUNDS GO AND WOULD

11:38:48 17 COME TO THE COURT IN DUE COURSE FOR THAT.

11:38:50 18 I WOULD NOT HAVE PUT EITHER OF YOU IN ANY

11:38:52 19 POSITION THAT WOULD BE OF DISADVANTAGE UNDER THOSE

11:38:56 20 CIRCUMSTANCES BECAUSE OF NECESSITY, IT SOUNDS LIKE,

11:39:03 21 BOTH OF YOU RECOGNIZE THAT YOU HAVE THE OBLIGATION

11:39:05 22 TO LITIGATE THAT ISSUE .

11:39:07 23 IF YOU ARE SUCCESSFUL IN ARBITRATION IN

11:39:09 24 COMING UP WITH SOME INTERIM RELIEF, THAT'S

11:39:12 25 SOMETHING THAT COULD BE PRESENTED TO THE

11:39:14 1 INTERPLEADER JUDGE -- IT MIGHT BE ME, IT MIGHT BE
11:39:17 2 SOMEONE ELSE -- BECAUSE THEN THERE IS NO CONFLICT
11:39:21 3 BETWEEN THE CLAIMANTS AND THE PART THAT IS IN
11:39:26 4 DISPUTE WOULD REMAIN FOR LATER ADJUDICATION.

11:39:29 5 I WANT TO GIVE THIS MORE THOUGHT. I JUST
11:39:31 6 WANTED TO AIR IT SO THAT I COULD SEE WHAT YOUR
11:39:34 7 RESPECTIVE POSITIONS WOULD BE.

11:39:36 8 I'M RUNNING OUT OF TIME HERE. ARE THERE
11:39:37 9 ANY FINAL --

11:39:38 10 MR. VAN DALSEM: COULD I SPEAK VERY
11:39:40 11 BRIEFLY JUST IN RESPONSE TO MR. BARRETT'S COMMENT?

11:39:43 12 THE COURT: SURE.

11:39:44 13 MR. VAN DALSEM: WE DIDN'T GO RUN INTO
11:39:45 14 COURT IN NEW YORK ON A TRO, AND IT WOULD HAVE BEEN
11:39:49 15 INAPPROPRIATE TO DO SO, BECAUSE ANY JUDGE WOULD
11:39:49 16 HAVE LOOKED AND SAID, WHAT'S THE IRREPARABLE HARM?
11:39:52 17 YOU KNOW, THE SPECIAL MASTER'S REPORT IS ACTUALLY
11:39:52 18 SUGGESTING THAT IT GO INTO A TRUST AND WE DON'T
11:39:55 19 KNOW WHAT JUDGE WARE IS GOING TO DO. YOU SHOULDN'T
11:39:58 20 HAVE -- COME BACK TO US IF THIS IS A REAL PROBLEM.

11:40:00 21 WE WOULD HAVE BEEN OUT OF A TRO
11:40:02 22 PROCEEDING IN FIVE MINUTES.

11:40:04 23 I THINK, GIVEN THE UNIQUE CIRCUMSTANCES
11:40:06 24 THAT PRESENT THEMSELVES TO THE COURT, THE
11:40:07 25 INTERPLEADER ACTION IS A GOOD SOLUTION AND ONE THAT

11:40:11 1 WOULD CERTAINLY PROTECT QUINN, EMANUEL'S INTEREST
11:40:14 2 AND THE CONNECTU PARTIES' INTEREST AT THE SAME
11:40:18 3 TIME, AND WE THINK THAT IT'S A WORKABLE SOLUTION.
11:40:21 4 IF WE CAN THEN EITHER CONSENSUALLY WORK
11:40:23 5 SOMETHING OUT OR WE OBTAIN AN ORDER FROM THE
11:40:29 6 ARBITER PANEL AS TO WHAT TO DO WITH THOSE FUNDS,
11:40:30 7 THEN WE CAN DEAL --
11:40:31 8 THE COURT: WELL, I'M JUST THINKING ABOUT
11:40:32 9 IT. OF COURSE, CONNECTU WOULD ARGUE THAT IT IS --
11:40:34 10 IT'S NOT AN IMPLEMENTATION OF THE AGREEMENT BECAUSE
11:40:37 11 THE AGREEMENT PROVIDES THAT IT WOULD RECEIVE, NOT
11:40:41 12 IT WOULD PLACE INTO COURT.
11:40:44 13 MR. BARRETT: THAT'S EXACTLY RIGHT, YOUR
11:40:46 14 HONOR. YOU'RE TYING UP ALL OF THE MONEY FOR A FEE
11:40:48 15 THAT IS ONLY A VERY LIMITED PART OF IT.
11:40:52 16 AND PARTICULARLY IF FACEBOOK IS GETTING
11:40:54 17 THE CONNECTU STOCK, WE DON'T THINK THAT THAT'S
11:40:58 18 FAIR.
11:40:58 19 AND, IN FACT, THE QUINN RETAINER SAYS
11:41:02 20 THAT THE LIEN SHALL BE FOR THE PURPOSE OF SECURING
11:41:05 21 OUR ATTORNEYS' FEES, AND WHAT THEY'RE -- WHAT THE
11:41:07 22 NET EFFECT IS, IS THAT THEY'RE -- IS THAT THEY'RE
11:41:11 23 SEQUESTERING 100 PERCENT OF THE JUDGMENT, OR THE
11:41:14 24 SETTLEMENT, TO PROTECT ONLY A VERY SMALL PORTION,
11:41:17 25 AND THAT'S NOT EVEN CONSISTENT WITH THEIR, WITH

11:41:20 1 THEIR OWN CONTRACT.

11:41:21 2 SO IT'S REALLY GIVING THEM LEVERAGE THAT

11:41:24 3 SHOULDN'T EXIST, EVEN UNDER THEIR OWN CONTRACT, TO,

11:41:27 4 YOU KNOW, FORCE US TO NEGOTIATE IF WE WANT TO GET

11:41:30 5 THAT, THAT SETTLEMENT PROCEEDS OUT.

11:41:33 6 AND THAT'S WHY I SAY IT WOULDN'T HAVE

11:41:36 7 BEEN A TRO PROCEEDING IN NEW YORK. IT WOULD HAVE

11:41:39 8 BEEN A PROCEEDING TO SAY HOW MUCH IS OUR LIEN

11:41:42 9 WORTH, BECAUSE THIS COURT OR THIS ARBITRATION PANEL

11:41:44 10 IS THE, IS THE PROPER JURISDICTION TO DECIDE THAT,

11:41:48 11 AT LEAST ON A TEMPORARY BASIS, AND THAT IS, I

11:41:51 12 THINK, SOMETHING THAT THEY COULD HAVE DONE.

11:41:53 13 MR. VAN DALSEM: WHICH, YOUR HONOR,

11:41:55 14 BRINGS ME FULL CIRCLE BACK TO OUR SUGGESTION, WHICH

11:41:58 15 IS WE DON'T SEEK TO SEQUESTER ALL THE MONEY. WE

11:42:01 16 SEEK TO SEQUESTER THAT WHICH IS NECESSARY TO SECURE

11:42:03 17 OUR CLAIM.

11:42:04 18 THE COURT: HOW MUCH IS THAT?

11:42:05 19 MR. VAN DALSEM: I DON'T WANT TO SAY A

11:42:07 20 NUMBER ON THE RECORD, PLUS THERE ARE SOME

11:42:08 21 COMPLICATIONS GIVEN THE VARIOUS TYPES OF

11:42:10 22 CONSIDERATION.

11:42:12 23 BUT THE POINT IS THAT IF THE PAYMENT

11:42:14 24 INSTRUMENTS ARE ISSUED JOINTLY, THAT EITHER THEN

11:42:17 25 RESULTS IN A NEGOTIATION AND A RESOLUTION, OR AN

11:42:20 1 ADJUDICATION BY THE PROPER FORUM, WHICH IS THE
11:42:22 2 INDEPENDENT ACTION.

11:42:23 3 THE COURT: I UNDERSTAND YOUR POSITION.

11:42:26 4 MR. CHATTERJEE, ANY FINAL WORDS BEFORE I
11:42:28 5 CLOSE THIS?

11:42:29 6 MR. CHATTERJEE: YES, YOUR HONOR, JUST A
11:42:32 7 FEW FAIRLY BRIEF REMARKS.

11:42:35 8 YOUR HONOR ASKED SOME QUESTIONS AND I
11:42:36 9 BELIEVE MR. BARRETT DISCUSSED SOME ISSUES
11:42:38 10 ASSOCIATED WITH, NUMBER ONE, JURISDICTION; AND,
11:42:41 11 NUMBER TWO, THE TRANSFER OF OWNERSHIP OF CONNECTU
11:42:44 12 TO FACEBOOK.

11:42:46 13 WITHOUT GOING INTO THE DETAIL BECAUSE I
11:42:48 14 KNOW TIME IS TIGHT, THERE ARE TWO CASES THAT I'D
11:42:50 15 LIKE YOUR HONOR TO TAKE A LOOK AT. THEY BOTH ARE
11:42:53 16 BANKRUPTCY CASES.

11:42:55 17 IN ONE INSTANCE THE BANKRUPTCY
11:42:57 18 PROCEEDINGS INVOLVED THE TRANSFER OF, ESSENTIALLY,
11:43:00 19 THE ASSETS OF A COMPANY AND AN EFFORT TO STOP THAT
11:43:04 20 AS PART OF THE APPEAL, AND THE NINTH CIRCUIT RULED
11:43:08 21 ON THAT SPECIFIC ISSUE, WHICH IS QUITE ANALOGOUS TO
11:43:10 22 THE ONE, AND IN THE WAY -- IT RULED ON IT IN THE
11:43:14 23 WAY THAT FACEBOOK IS ADVOCATING.

11:43:16 24 THAT CASE IS, IS CALLED IN RE: RAINS.
11:43:21 25 IT'S A 2005 NINTH CIRCUIT CASE, 428 F.3D 893.

11:43:28 1 AND THEN THERE'S AN EARLIER CASE THAT

11:43:31 2 ALSO HAS MANY RELATED ISSUES THAT IS WORTH TAKING A

11:43:34 3 LOOK AT, AND IT INCLUDES THE STATEMENT, "A PARTY

11:43:37 4 WHO CHOOSES TO APPEAL BUT FAILS TO OBTAIN A STAY OR

11:43:40 5 INJUNCTION PENDING APPEAL RISKS LOSING ITS ABILITY

11:43:43 6 TO REALIZE THE BENEFIT OF A SUCCESSFUL APPEAL."

11:43:46 7 I THINK THAT'S SELF-EXPLANATORY AS TO WHY

11:43:48 8 IT COULD BE RELEVANT HERE. THAT IS GEMMILL VERSUS

11:43:53 9 ROBISON, 557 F.2D 179. THAT'S A NINTH CIRCUIT CASE

11:43:57 10 FROM 1977.

11:43:59 11 THE FINAL REMARK, YOUR HONOR, IT WAS VERY

11:44:03 12 INTERESTING TO HEAR MR. BARRETT'S COMMENTS ABOUT

11:44:05 13 WHAT QUINN, EMANUEL COULD HAVE OR SHOULD HAVE DONE

11:44:08 14 IN NEW YORK, IN THE NEW YORK SUPREME COURT

11:44:11 15 ASSOCIATED WITH THIS JUDGMENT, BECAUSE YOUR HONOR

11:44:14 16 ASKED AN IMPORTANT QUESTION OF MR. BARRETT WITH

11:44:19 17 RESPECT TO THE ORDER TO SHOW CAUSE.

11:44:22 18 THE ORDER TO SHOW CAUSE WAS ISSUED

11:44:24 19 SEPTEMBER 19TH. THIS HEARING IS ROUGHLY SIX WEEKS

11:44:27 20 LATER.

11:44:28 21 NOW, THEY CAN COME IN AND SAY QUINN,

11:44:31 22 EMANUEL DID NOT DO THESE THINGS AND THEY HAD ALL

11:44:33 23 THE TIME IN THE WORLD TO DO IT.

11:44:34 24 BUT THE ONE THING THAT DIDN'T HAPPEN

11:44:36 25 BETWEEN SEPTEMBER 19TH AND TODAY IS, DESPITE THE

11:44:39 1 VOLUMES, THE DOZENS OF PAGES OF PLEADINGS THAT HAVE
11:44:43 2 BEEN ENTERED IN THIS CASE SINCE WE FILED THE MOTION
11:44:45 3 TO ENFORCE, THEY DIDN'T FILE A MOTION FOR A WRIT.
11:44:48 4 THEY DID NOT ASK THE NINTH CIRCUIT TO
11:44:50 5 INTERVENE AND STOP THIS PROCEDURE FROM GOING
11:44:53 6 FORWARD, AND I THINK YOUR HONOR WAS ABSOLUTELY
11:44:55 7 RIGHT TO ASK THAT QUESTION.
11:44:57 8 AT THIS POINT, EIGHT MONTHS AFTER WE
11:44:59 9 SETTLED THE CASE, WE'RE ENTITLED TO THE VALUE WE
11:45:02 10 BARGAINED FOR, AND WE ASK YOUR HONOR TO DO EXACTLY
11:45:05 11 WHAT YOU SAID IN THE ORDER TO SHOW CAUSE, WITH THE
11:45:07 12 ONE EXCEPTION OF FOLLOWING WHAT I BELIEVE YOUR
11:45:10 13 HONOR'S GOING TO DO WITH RESPECT TO THE
11:45:11 14 CONSIDERATION FACEBOOK PAID IN, AND THAT IS TO HOLD
11:45:15 15 IT IN SOME WAY IN ABEYANCE UNTIL THE QUINN,
11:45:19 16 EMANUEL/CONNECTU FOUNDERS' DISPUTE IS RESOLVED TO
11:45:22 17 FIGURE OUT HOW THOSE FUNDS SHOULD BE ALLOCATED.
11:45:26 18 THANK YOU, YOUR HONOR.
11:45:28 19 MR. VAN DALSEM: YOUR HONOR,
11:45:28 20 MR. GARTEISER POINTED OUT SOMETHING I FORGOT TO
11:45:33 21 MENTION, JUST VERY BRIEFLY.
11:45:34 22 THE COURT: SURE.
11:45:34 23 MR. VAN DALSEM: IN OUR BRIEF ON PAGE 7,
11:45:37 24 THERE'S A CITATION TO A CASE CALLED BROWN VERSUS
11:45:37 25 SUPERIOR COURT. IT'S A 2004 CASE.

11:45:40 1 AND THE QUOTE, WHICH IS IN THE BRIEF,

11:45:41 2 SAYS, QUOTE, "IT MIGHT WELL CONSTITUTE A DENIAL OF

11:45:45 3 SUBSTANTIAL JUSTICE AND, THEREFORE, AN ABUSE OF

11:45:48 4 DISCRETION FOR THE TRIAL COURT TO DIRECT PAYMENT OF

11:45:50 5 THE JUDGMENT PROCEEDINGS TO THE FORMER CLIENT

11:45:53 6 WITHOUT GIVING THE FORMER ATTORNEY A FAIR

11:45:55 7 OPPORTUNITY TO FIRST LITIGATE THE VALIDITY OF HIS

11:45:57 8 LIEN CLAIM IN A SEPARATE ACTION."

11:45:59 9 SO THERE IS, THERE IS AUTHORITY DIRECTLY

11:46:01 10 ON POINT UNDER CALIFORNIA LAW FOR WHAT WE ARE

11:46:04 11 ASKING FOR, WHICH IS PROTECTION FROM THE TRIAL

11:46:06 12 COURT, NOTWITHSTANDING THE CARROLL COURT'S

11:46:09 13 ADMONITION THAT THIS SHOULD ALL BE LITIGATED IN A

11:46:12 14 SEPARATE FORUM.

11:46:13 15 THE COURT: VERY WELL. I CONTINUE TO

11:46:16 16 APPRECIATE THE DIFFICULTY OF THE LEGAL ISSUES THAT

11:46:25 17 THIS CASE PRESENTS AND THE -- AND I ALSO APPRECIATE

11:46:31 18 THE ADVOCACY THAT YOU'VE ALL PRESENTED TO ME.

11:46:35 19 I WANT TO THANK, AGAIN, ON THIS RECORD,

11:46:38 20 MR. FISHER, THE MASTER, WHO IS PRESENT HERE.

11:46:44 21 HE HAS PROVIDED THE COURT WITH AN

11:46:49 22 OPPORTUNITY TO IMPLEMENT THE JUDGMENT BY

11:46:53 23 SAFEGUARDING THE ASSETS.

11:46:57 24 IN TODAY'S VOLATILE ECONOMIC CLIMATE, I'M

11:47:00 25 HAPPY THAT THAT'S NOT AN ISSUE THAT IS BEFORE THE

11:47:02 1 COURT AS TO WHETHER OR NOT THE PROCEEDS PUT IN HIS
11:47:05 2 HANDS HAVE BEEN ADEQUATELY SAFEGUARDED.

11:47:08 3 I KNEW, IN APPOINTING HIM, THAT I HAD A
11:47:11 4 PERSON WHO WOULD BE MINDFUL OF THE SECURITY OF
11:47:15 5 THOSE, OF THOSE PROCEEDS, AND SO I WANT TO THANK
11:47:19 6 HIM ON THIS RECORD FOR HIS CONTINUED SERVICE.

11:47:22 7 AND SO I WILL -- MY INTENT IS TO ACT AS
11:47:25 8 QUICKLY AS I CAN.

11:47:26 9 WHAT I WANTED TO SIGNAL TO THE PARTIES IS
11:47:29 10 MY SENSITIVITY TO THE ARGUMENT THAT I AM ACTING IN
11:47:33 11 EXCESS OF MY JURISDICTION.

11:47:35 12 I DON'T BELIEVE SO, AND FOR THAT REASON I
11:47:44 13 WOULD INTEND TO GIVE A VERY SHORT PERIOD OF TIME
11:47:50 14 BEFORE WHATEVER IMPLEMENTATION I ORDER WOULD TAKE
11:47:58 15 PLACE, AND AT THE SAME TIME, SUFFICIENT TIME, IN MY
11:48:02 16 VIEW, TO ALLOW THE PARTIES TO MAKE THE CASE BEFORE
11:48:05 17 THE CIRCUIT THAT I AM ACTING IN EXCESS OF MY
11:48:10 18 JURISDICTION, TO SEEK SOME DIRECTION FROM THAT
11:48:13 19 COURT TO THIS COURT AS TO WHETHER IT SHOULD STAY
11:48:20 20 ITS HAND SO AS TO ALLOW THE NINTH CIRCUIT TO DEAL
11:48:23 21 WITH THIS IN A MORE COMPLETE FASHION.

11:48:26 22 SO I'LL PUT PEN TO PAPER HERE IN SHORT
11:48:29 23 ORDER, AND MY STAFF HAS DONE A VERY GOOD JOB UP TO
11:48:34 24 NOW OF ALERTING YOU TO WHEN THE ORDER HAS ISSUED SO
11:48:37 25 THAT YOU CAN LOOK ON-LINE AT IT AND TAKE WHATEVER

11:48:41 1 APPROPRIATE ACTION YOU WANT TO TAKE WITH RESPECT TO
11:48:43 2 IT.

11:48:44 3 THANK YOU ALL.

11:48:45 4 MR. BARRETT: THANK YOU, YOUR HONOR.

11:48:46 5 MR. CHATTERJEE: THANK YOU, YOUR HONOR.

11:48:47 6 (WHEREUPON, THE PROCEEDINGS IN THIS

11:48:47 7 MATTER WERE CONCLUDED.)

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